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OF

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FROM THE EARLIEST TIMES TILL THE REIGN OF
KING GEORGE IV.

BY

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When Lord Keeper Littleton fled to York in May, 1642, the parliamentary leaders were thrown into great perplexity. Knowing the importance of the Great Seal, they had cultivated him very assiduously, and from his vote upon the militia ordinance, they believed he had so completely committed himself against the Court, that he must remain entirely under their control. After that occurrence, the precaution they had contemplated of ordering the Great Seal to be kept in some secure place, appeared unnecessary. They were thus quite unprepared for the misfortune of this machine of government being transferred from them to the King.

While he now had the advantage of duly issuing whatever grants, commissions, or proclamations he might think proper, they foresaw that the administration of justice would be materially impeded in the metropolis,—that they could not even have new elections to fill up vacancies in the House of Commons,—and that they could not do any act of state to which the Great Seal was necessary. Having assumed the exercise of supreme power, their policy was to carry on the government in the King's name, according to the forms of the constitution.

Encouraged by Littleton's submissive petition to the House of Lords, they thought it possible that he might be playing a double part; and, by way of experiment, they sent some "proclamation writs" to Nottingham, where he then was with the King,—about the time when the royal standard was first raised there,—and he was required to seal them according to the duties of his office.

Littleton, even now not disposed to come to an open rupture with the Parliament, as an equivocating excuse wrote the following letter to the clerk of the Crown in Chancery: [Aug. 30, 1642.] —"Sir, I could not seal the proclamation writs you sent unto me from the Lords, for that I never could have the Seal sithence the receipt of them until this hour."

After several conferences between the two Houses, who wished to throw all the odium upon the King, it was resolved to set forth "a declaration, showing to the people the great obstruction of justice by the taking and detaining the Great Seal out of the custody of the Lord Keeper." Committees were likewise appointed to consider "how these and the like inconveniences may be remedied and prevented for the future;" and that of the Commons was particularly to report upon a method "how the House may be replenished of their members, notwithstanding writs for a new election instead of those cast out of the House cannot be sealed as is usual."*

The declaration accordingly came out, heavily complaining of the infraction of the clause in Magna Charta—"Nulli negabimus, nulli deferemus justitiam vel rectum;" but a long time elapsed before any measure to meet the evil could be agreed upon. It was vain to expect that proceedings which had immemorially been under the Great Seal could take place without its authority, and many lawyers were startled by the express enactment in the statute 25 Edw. III., that "to counterfeit the King's Great Seal shall be high treason"—an enactment which might have been very inconveniently put in force against all those who voted for a new Great Seal, should the royal party prevail. They therefore contented themselves for the present with passing an ordinance to make void all patents and grants under the King's Great Seal since the time it ceased to attend the parliament, and forbidding obedience to any proclamation for removing the Courts of Justice from Westminster.†

The inconvenience, however, was more and more severely felt, particularly by the professors of the law. Says Whitelock, "The courts of justice were not yet open, and *there was no practice for lawyers*."‡ About this time, there came out a pamphlet, which caused a considerable sensation, entitled "St. Hilary's Tears shed upon all Professors of the Law, from the Judge to the Pettifogger, for Want of a stirring Term, written by one of his Secretaries that hath nothing else to do."§

At last, in May, 1643, Oliver St. John, still called "Solicitor General," and Serjeant Wilde, the two boldest lawyers on the popular side, resolved upon a strenuous effort to have a new Great Seal, and

* Lords' Journ. v. 343. Com. Journ. ii. 771.

† Jan. 21, 1643. ‡ Whit. Mem. 71.

§ Thus it began: "A term so like a vacation; the prime court, the Chancery (wherein the clerks had wont to dash their clients out of countenance with long dashes); the examiners to take the depositions in hyperboles, and round-about *Robinhood* circumstances with *saids* and *aforesaids*, to enlarge the number of sheets;"—alluding to the abuse which it has never yet been found possible to correct, of allowing cost according to the number of written words, by so much a folio.

they induced the Commons, without a division, to agree to the following resolutions. 1. "That the Great Seal of England ought, by the laws of the land, to attend the parliament." 2. "That the Great Seal of England doth not attend the parliament as it ought to do." 3. "That by reason thereof, the commonwealth hath suffered many grievous mischiefs, tending to the destruction of the King, parliament, and kingdom." 4. "That it is the duty of both Houses to provide a speedy remedy for these mischiefs." Then came the fifth and startling resolution. "THAT A GREAT SEAL OF ENGLAND SHALL BE FORTHWITH MADE TO ATTEND THE PARLIAMENT, FOR THE DESPATCH OF THE AFFAIRS OF THE PARLIAMENT AND THE KINGDOM."

But a strong opposition sprung up to this proceeding, the more cautious members suggesting that it would be a direct renunciation of all allegiance to the Crown,—that they still acknowledged Charles for their sovereign, and were in treaty with him for a peaceable settlement of all differences, notwithstanding his misgovernment by advice of evil counsellors,—and that the making of a new Great Seal would be a direct infraction of an act of parliament, for which they might hereafter be made criminally responsible. On the other hand, the more determined urged that it was unworthy to start technical difficulties as to the mode of exercising the authority of the parliament in the manner most effectual and most beneficial to the pubilc,—that a new Great Seal, which would so much facilitate the transaction of public business, would not be a greater departure from law than issuing orders in the King's name against his person,—and that it was much too late to talk prudishly of a regard to law, after they had fought the King at Edgehill, and he had declared by proclamation, not only that all who had appeared against him in arms, but all who had contributed money, or stores, or provisions for the use of those whom he designated *Rebels*, were guilty of high treason. After a long debate, the last resolution was carried only by a majority of 12,—the yeas being 86, and the noes 74.*

The Lords, whose deliberations were chiefly guided by the Earl of Manchester (formerly Lord Kimbolton), now presiding on the woolsack as Speaker, the Earl of Northumberland, and the Earl of Essex when he could be spared from the army,—were by no means as yet prepared to go the full length of these resolutions. On the first, they voted "that the Great Seal ought to be applied to the commands of the parliament according to the laws of the land, but that it ought not, according to the laws of the land, to attend the commands of the parliament." The fifth resolution, for making forthwith a new Great Seal, they met with a direct negative.

Several conferences upon the subject were held between the two

* With the tellers making a house of 164. I believe there was seldom afterwards a more numerous attendance, even before Pride's purge, or the violent exclusion of members,—a considerable number having joined the King, many of the parliamentary party being with the army, and there being long no means of filling up vacancies.

[JULY 4, 1643.] Houses to no purpose. At the last of these the Commons submitted the following reasons for the measure they recommended, divided into two general heads:—

I. "*Mischiefs occasioned by conveying away the Great Seal from the Parliament.*

1. "It was secretly and unlawfully carried away by the Lord Keeper contrary to the duty of his place; who ought himself to have attended the parliament, and not to have departed without leave; nor should have been suffered to carry away the Great Seal if his intentions had been discovered.

2. "It hath been taken away from him and put into the hands of other dangerous and ill-affected persons; so as the Lord Keeper, being sent unto by the parliament for the sealing of some writs, returned answer, that he could not seal the same because he had not the Seal in his keeping.

3. "Those who have had the managing thereof have employed it to the hurt and destruction of the kingdom sundry ways: by making new Sheriffs in an unusual and unlawful manner, to be as so many generals or commanders of forces raised against the parliament; by issuing out unlawful commissions of array, with other unlawful commissions for the same purpose; by sending forth proclamations against both Houses of parliament and several members thereof, proclaiming them traitors against the privileges of parliament and laws of the land; by sealing commissions of oyer and terminer to proceed against them and other of his Majesty's good subjects adhering to the parliament as traitors; by sending commissions into Ireland to treat a peace with the rebels there contrary to an act of parliament made this session; besides, divers other dangerous and illegal acts have been passed under the Great Seal since it was secretly conveyed away from parliament, whereby great calamities and mischiefs have ensued to the kingdom's prejudice.

II. "*Mischiefs proceeding through want of the Great Seal.*

1. "The terms have been adjourned; the courts of justice obstructed.

2. "No original writs can be sued forth without going to Oxford; which none who holds with the parliament can do without peril of his life or liberty.

3. "Proclamations in parliament cannot issue out for bringing in delinquents impeached of high treason, or other crimes, under pain of forfeiting their estates, according to the ancient course.

4. "No writs of error can be brought in parliament to reverse erroneous judgments; nor writs of election sued out for choosing new members upon death or removal of any; whereby the number of the members is much lessened, and the House in time like to be dissolved

if speedy supply be not had, contrary to the very act for continuance of this parliament.

5. "Every other court of justice hath a peculiar seal; and the parliament, the supreme court of England, hath no other seal but the Great Seal of England; which, being kept away from it, hath now no seal at all; and therefore a new seal ought to be made.

"This Seal is *clavis regni*, and therefore ought to be resident with the parliament (which is the representative of the whole kingdom) while it continues sitting, the King as well as the kingdom being always legally present in it during its session."

The Lords having sent a message "that their Lordships do adhere to their former resolutions concerning the making of a new Great Seal," the Commons the following day resolved, "That a Great Seal of England shall be presently made, and that a committee be appointed for this purpose, and that Sir Robert Harley take care of the speedy and effectual execution of this order."* They meant this only by way of hint, that they might exclusively assume sovereign authority, and in the expectation that when the Seal was made the Lords would acquiesce in the use of it.

There seems to have been a difficulty in finding an engraver who would undertake the work without the direct order of the House, and about a week afterwards it was resolved, "that Mr. Marten (the regicide) do to-morrow bring hither the man, who will undertake to grave the Great Seal, to receive his directions."† One Simonds, an eminent engraver, was accordingly introduced, and was fortified with the following warrant, signed by the Speaker. "Ordered that Mr. Simonds be required and enjoined forthwith to make a new Great Seal of England, and that he shall have 100*l.* for his pains, 40*l.* in hand and threescore pounds as soon as he shall have finished the work."‡

On the 28th of September a Seal engraved on silver, copied from an impression of the King's Great Seal, and in all respects resembling it, was brought into the House, when an order was made "that it should be sealed up and delivered into the custody of Mr. Speaker, not to be made use of until the House take further order."§

The leaders of the Commons were now very much perplexed as to their next move, for they were by no means yet prepared to throw off the authority of the Lords, that House retaining considerable influence with the public, and the Earl of Essex and other Peers being indispensably necessary for carrying on the war. They resolved to make another effort to obtain the concurrence of the other House. In the meanwhile the battle of Newbury had been fought; the exasperation of the contending parties had considerably increased; and Essex had been recently gratified by the dismissal of his rival, Sir William Waller, who from some temporary successes had been quaintly called "*William the Conqueror*," and had excited the jealousy of the "Lord General." It was likewise hoped that some impression had been made

* Lords' Jour. vi. 117, 119. Com. Jour. iii. 154, 155.
† Com. Jour. iii. 162. ‡ Ibid. 174. § Ibid. 257.

by Prynne's famous treatise, written for this occasion, which the House had ordered to be printed,* entitled,

"THE OPENING OF THE GREAT SEALE OF ENGLAND,

"CONTAINING

"Certain brief, historicall, and legall observations touching the originall antiquity, use, necessity of Great Seale of the Kings and kingdom of England, in respect of charters, patents, writs, commissions, and other processe,

"Together with the King's kingdom's parliament's severall interests in and power over the same, and over the Lord Chancellor and the Lords and Keepers of it, both in regard of its new making, custody, administration for the better execution of publike justice, the republique necessary safety and utility;

"Occasioned by the over rash censures of such who inveigh against the parliament for ordering a new Great Seale to be engraven to supply the wilful absence, defects, abuses of the old, unduely withdrawne and detained from them.

"By WILLIAM PRYNNE, utter Barrister of Lincoln's Inne.

"Esther, viii. 8. 'Write ye also for the Jews, as it liketh you, in the King's name, AND SEAL IT WITH THE KING'S RING; for the writing which is written in the King's name, AND SEALED WITH THE KING'S RING, may no man reverse.'"

In this treatise, the author of HISTRIOMASTIX, having lost his ears, but not his learning or his dulness, nor his perverse ingenuity,—by a misapplication of scripture and legal authorities, had attempted to prove that the Great Seal of England was meant to express the will of the King and the other estates of the realm, and that upon the default or deficiency of any one branch of the legislature, it might be lawfully used by the remainder.†

A committee was appointed "to consider what is fit to be done concerning the Great Seal, and the use of it, and of the former votes on both Houses concerning it, and to report their opinions to this House: and this business is especially recommended to Mr. Serjeant Wilde, and all the lawyers of the House."

Mr. Serjeant Wilde reported from the committee that another conference on the subject should be demanded from the Lords,—which was agreed to, and he was appointed to manage it. He forcibly recapitulated the former reasons, introducing a little of Prynne's argumentation—dwelt upon a proclamation lately put forth by the King for seizing the estates of all parliament men, and any who adhere to the parliament,—and pointed out the absolute necessity for the use of a new Great Seal, to preserve the government of this kingdom, and to provide for the administration of justice.‡

* Sept. 15, 1643.

† It was pretty much on this reasoning that Mr. Pitt's Regency Bill proceeded in 1789, which was adopted by the Tory party,—the heir apparent, in whom was the hereditary right, being supposed to be adverse to them. A Great Seal was fabricated for the occasion, after the example of the Long Parliament,—as the commission to go through the form of giving the Royal consent, was purely the act of the two Houses.

‡ Lords' Jour. vi. 252, 253.

The Lords yielded; and "taking into serious consideration the necessity of preserving the government of the kingdom and his Majesty's authority in parliament, and the being thereof, and the due administration of justice, and perceiving, by the mischiefs already experienced, how absolutely indispensable it is to have the Great Seal attending the parliament,—after a mature debate this question was put,—Whether a Great Seal of England shall be forthwith made to attend the parliament for despatch of the affairs of the parliament and of the kingdom?—and it passed affirmatively."*

A message to this effect coming down to the Commons, they resolved, on the motion of Serjeant Wilde, that "an ordinance should forthwith be framed for more effectually invalidating all proceedings under the Great Seal at Oxford, and for vesting the Seal of the parliament in Commissioners, with the powers of Lord Chancellor or Lord Keeper, to be exercised under the directions of both Houses."† [OCT. 17, 1643.]

An ordinance to this effect speedily passed through the House of Commons; but it seems to have met with some obstruction in the Lords, and not fewer than six messages were sent up from the Commons praying their Lordships to concur with them in putting the new Great Seal in execution, and to expedite their answer concerning the Great Seal,—the messengers from the Commons always being informed that "their Lordships would send an answer by messengers of their own." At last Serjeant Wilde came to the bar of the Lords, and, with his characteristic energy, read them a lecture on their long delays, telling their Lordships "that the ordinance concerning the Great Seal was of such absolute necessity that the Commonwealth suffered great prejudice for want thereof." The difficulties, whatever they might have been, were then overcome; and, after some conferences to fix the names of the Commissioners, the ordinance received the assent of both Houses, and, according to the doctrine then prevailing, became law. [Nov. 10, 1643.] Six Commissioners were appointed,—two members of the House of Peers, and four members of the House of Commons, "which said persons, or any three or more of them, whereof one member or more of the Lords' House, also one member or more of the House of Commons, should be present, were authorized to have the keeping, ordering, and disposing of the new Great Seal, as also all such and the like power as any Lord Chancellor or Lord Keeper, or Commissioners of the Great Seal ever had, used, or ought to have."‡

After some preliminaries had been settled as to the form of the oath to be taken by the Commissioners, and the place where the Seal was

* Lords' Jour. vi. 254. † Com. Journ. iii. 278.

‡ Lords' Jour. vi. 300, 301. "It must surely excite a smile that men who had raised armies and fought battles against the King, should be perplexed how to get over so technical a difficulty. But the Great Seal in the eyes of English lawyers has a sort of mysterious efficacy, and passes for the depositary of royal authority in a higher degree than the person of the King."—*Hall. Const. Hist.* ii. 222.

to be kept by them,*—on the 30th of November the Speaker of the Commons, attended by the whole House, appeared at the bar of the Lords, and said,—"My Lords, Whereas the Great Seal of England was, by order of the House of Commons, appointed to be in my custody, without being made use of until it should be settled and disposed of by authority of ordinance of both Houses of parliament, I am now commanded by the House of Commons to deliver the same to the Speaker of your Lordships' House, so that the Commissioners may be sworn, and the Great Seal delivered to them in full parliament." The Speaker of the Lords went down from his place to the bar, and received it from the hands of the Speaker of the Commons and brought it to the woolsack. Thereupon the Earl of Kent and the Earl of Bolingbroke, the two Peers Commissioners, were sworn at the table, the Speaker of the Lords administering the oath of office to them. Next the four Commissioners, members of the House of Commons, viz. Oliver St. John, Solicitor to his Majesty; Mr. Serjeant Wilde, Samuel Brown, Esq., and Edward Prideaux, Esq., took the oath, the Clerk of the Parliament reading it to them. Then the Speaker of the Lords carried the Great Seal to the bar, and delivered it to the Six Commissioners in full parliament, and the Commons and their Speaker returned to their own House.†

On a subsequent day the Lords Commissioners all took the oath required by the Triennial Act, and the oaths of allegiance and supremacy‡ before both Houses,—at the same time that Lenthal was sworn in Master of the Rolls, having been appointed to that office by ordinance, while Colepeper enjoyed the same title at Oxford under the King's patent.§

As soon as the news of these proceedings reached Oxford, a proclamation was issued by the King, under his Great Seal, denouncing the counterfeiting of the Great Seal by the parliament as "High Treason," forbidding the use of it, declaring null and void all done under it, and threatening to prosecute, as traitors or accessories, all who should use it or pay respect to it. But this was treated at Westminster as *brutum fulmen*, and was not thought even worthy of an answer.||

[JAN. 1644.] By several supplemental ordinances and resolutions of the two Houses, offices were provided for the "Lords Commissioners" and "His Honour,"—and, after an interruption of nearly two

* That this Seal might not be carried off to the King, or applied to any improper purpose, it was to be kept in the office of the Clerk of the House of Peers, sealed up with three of the Commissioner's seals, in an iron chest, under three different locks, each Commissioner having one key.—*Lord's Jour.* vi. 300, 301.

† This graphic description of the ceremony is nearly in the very words of the Lords' Journals, vi. 318.

‡ These oaths continued to be taken by all persons in employment under the parliament till the end of the civil war.

§ In the absence of royal authority, great importance seems to have been attached to the allegation that these acts were done "*en plein parliament*," an expression frequently occurring in the early rolls respecting the granting of honours and offices.

|| Nov. 29, 1643. Doquets of Great Seal at Oxford, Temp. Car. I.

years, the Court of Chancery was re-opened at Westminster, and the business proceeded with great vigour. On the first day the Commissioners sat, they sealed above five hundred writs. In judicial matters they were left to their own discretion; but in putting the Seal to grants and appointments to offices they acted ministerially, under the orders of the two Houses.

The House of Commons immediately ordered an account of all sums paid into the Court of Chancery for the last twenty years, and that if any should prove to be the moneys of malignants or delinquents, or to be dead stock, it should be applied to the public service.* This is the origin of the "Suitors' Fund."

In answer to a proclamation under the King's Great Seal, adjourning the courts to Oxford, the first state document to which the Lords Commissioners put their Great Seal, was a counter-proclamation, by which all judges, officers, suitors, and other faithful subjects of his Majesty, were enjoined, under a heavy penalty, to attend the Courts at Westminster.†

Serjeant Wilde appears to have been by far the most active of the six Commissioners, and next to him, at a long interval, came Oliver St. John, who was an able lawyer, but devoted much of his time to politics. One of the noble Lords Commissioners always sat along with the Commoners, but did not interfere unless on occasions of ceremony.

A commission was soon after issued, authorizing the Master of the Rolls, and certain of the Judges, to assist in the hearing of causes in the Court of Chancery.

Things continued on this footing at Westminster till the month of August, 1646, when the King's Great Seal, having been taken at Oxford, was broken in pieces with great solemnity in the presence of both Houses, and there ceased to be rival Great Seals in England.‡ At the same time the Earl of Salisbury, [Aug. 11, 1646.] who had been appointed in the place of the Earl of Bolingbroke, deceased, was sworn as a Lord Commissioner. The Earl of Kent, having taken his place as a Peer, came down to the bar and received the parliamentary Great Seal from the other Commissioners. He presented it to the Clerk of the Parliament, by whom it was carried to the Speaker of the House of Lords, and laid on the woolsack. The Earl of Salisbury then at the table took the oath of supremacy, *the oath of allegiance*, the oath of office, and the oath under the triennial act. Finally, the Speaker of the House of Lords carried the Seal to the bar, where the Commons, with their Speaker, then stood, and delivered it to the Earl of Salisbury to be kept by him with the rest of the Commissioners.§

Violent disputes now arose respecting the Commissionership of the Great Seal and other offices. Oliver Cromwell, who at first was pro-

* Com. Jour. iii. 346. The return made would be very curious, but I have not been able to meet with it.

† Jan. 6, 1644. Com. Jour. iii. 359.

‡ Ante, Vol. II. chap. lxvii.

§ Lords' Jour. 458.

bably influenced only by a fanatical zeal for religion and liberty, had for some time been goaded on by personal ambition, and distinctly aimed at supreme power. With this view he was pursuing his "Self-denying Ordinances,"—from which he meant that he himself should be excepted, whilst they should deprive of all power the Earl of Essex, the Earl of Manchester, and the leaders in both Houses, whose ascendency he dreaded. Accordingly, on the self-denying principle, he caused an ordinance to be brought in by which it was declared that the Great Seal should not, in future, be held by any member of either House, and three new Commissioners, not in parliament, were named to supersede the six now in office. In the Commons, a vote was obtained, by a majority of 75 to 65, "that no member of either House should be a Commissioner of the Great Seal," and three Commissioners were agreed upon, who were not in parliament,—Sir Rowland Wandesford, Sir Thomas Biddingfield, and Bradshaw, afterwards President of the High Court of Justice. At the same time it was provided that the presentations to livings and the appointment of Justices of the Peace should be in the two Houses; and an order was made, "that the Commissioners for the custody of the Great Seal do not relieve any person in Chancery in any case where the party may be relieved by the common law."*

But the self-denying system was not at all approved of by the Lords, as it operated most unequally, by at once disqualifying the whole body of the Peerage from holding any public employment. They therefore rejected the ordinance for transferring the Seal to the three new Commissioners.

The Commons then passed another ordinance, as a compromise for the present, "That the Speakers of both Houses should have power to seal all original writs and processes, and likewise commissions and pardons, which have usually passed, and ought to pass, under the Great Seal, as fully as any Lord Keeper or Commissioners for the Great Seal for the time being ought and might have done;" and sent it up to the Lords with a message, "That in regard of the great obstruction of the proceedings in Chancery because the Commissioners of the Great Seal are not settled, and in regard of the great prejudice the subject suffers for want of sealing of writs, there being now 8000 writs ready to be sealed, the Commons had framed an ordinance for preventing of these inconveniences, wherein they desire their Lordships' concurrence."

The Lords agreed to the ordinance with some immaterial amendments; and it was followed by another, for appointing the Master of the Rolls and certain Judges to hear causes in Chancery in the absence of the Lords Commissioners.

An order was thereupon made that the late Commissioners should deliver the key of the chest in which the Great Seal was kept to the Speaker of the House of Commons; and Lenthal accordingly received it from Serjeant Wilde. The sum of 1000*l.* was voted to each of them for their trouble, and it was ordered that such of them as were of the

* Com. Jour. iv. 701.

Long Robe should thenceforth have the privilege of practising within the bar.

On the 31st of October the two Speakers were sworn in, both Houses being present. The Earl of Manchester, standing in his place at the woolsack, took the following oaths:—1. The oath of supremacy. 2. The oath of allegiance. 3. The oath of office, which he read himself;—and, 4. The oath under the triennial act, administered to him by the Clerk of the Crown. Then Lenthal had the same oaths administered to him,—the two first at the bar, the third read to him by the Speaker of the Lords' House. This being done, the Earl of Manchester went down to the bar, and the Great Seal being brought from the woolsack and taken out of the purse and opened, the Speaker of the Lord's House took it into his hand, and said,—"According to the ordinance of both Houses of parliament authorizing me to be a Commissioner of the Great Seal, I do receive and deliver it unto you (the Speaker of the House of Commons) as the other Commissioner."*

[A. D. 1647.]

On the 2d of November the new Lords Commissioners began the business of the Seal, and a Judge and a Master in Chancery by turns assisted them; but their sittings were very irregular, and there were heavy complaints of delays and ill-considered decrees. Their authority was set at defiance by Jenkins, a common-law Judge, who had stoutly adhered to the King, and had tried and executed several persons for taking arms against him. This spirited Welshman being brought up in custody for disobedience to the process of the Court of Chancery, was required to put in an answer to a bill filed against him, imputing to him gross fraud and breach of trust; but he told them "that he neither ought nor would submit to the power of that Court, for that it was no Court, and their Seal was counterfeit."

[A. D. 1647.]

An ordinance being introduced to attaint him for this contumacy and his other misdeeds, he was brought to the bar to make his defence; but he refused to kneel, denied their authority, told them that they wronged the King, and that there could be no law without a King. The House fined him 1000*l.* for his contempt. At another day he was specifically called upon to plead to the charges of having given judgment of death against men for assisting the parliament, having been himself in arms against the parliament, having persuaded others to do the like, and having denied the power of the parliament; but he still said they had no power to try him, and he would give them no other answer. The attainder passed the Commons, but was allowed to drop in the Lords; and afterwards, in the year 1651, when the government was better established, on a slight submission Jenkins received a pardon under the Great Seal of the Commonwealth.†

It was meant that the present arrangement respecting the Great Seal should only be temporary, and a joint committee of the two Houses, consisting of fifteen Peers and thirty Commoners, repeatedly met in the

* Lords' Jour. viii. 552.

† Whit. Mem. 291, 292, 301, 347, 389, 464, 511.

Painted Chamber, with the view of devising some plan that might be more satisfactory to the public. The Commons, now more and more [A. D. 1647.] under the influence of Cromwell, were for extending the self-denying ordinance to the Great Seal; but the Lords, feeling their influence declining, would not part with this remnant of their power, and came to a resolution "that among the Commissioners of the Great Seal there should be one or more members of their House."

These disputes rendered it necessary that the time should be prolonged for which the two Speakers were to be the Lords Commissioners, and this was repeatedly done by ordinance,—generally from twenty days to twenty days.* But the King was now a prisoner: military despotism was established under the semblance of liberty,—and the discerning saw that the struggle of the Peers to maintain their independence would be unavailing, and that every thing must bend to the mandate of Cromwell.

CHAPTER LXIX.

LORDS COMMISSIONERS OF THE GREAT SEAL FROM THE FIRST APPOINTMENT OF WHITELOCK TILL THE ADOPTION OF A NEW GREAT SEAL BEARING THE INSIGNIA OF THE REPUBLIC.

Amidst the stirring political events which for some time occupied the [A. D. 1648.] public,—the negotiations with the King at Holmby,—his being violently carried off by Joyce,—his flight from Hampton Court,—his imprisonment in Carisbrook Castle,—and the attempts of the army to overpower the parliament,—the custody of the Great Seal, and the administration of justice in the Court of Chancery, excited little attention.

But in an interval of comparative quiet which occurred in the spring of 1648, loud complaints were heard of the absurdity of having for the two supreme Equity Judges a lay Peer, because he happened to be Speaker of the House of Lords, and the Speaker of the House of Commons, who, though he had been bred to the law, was now completely absorbed in his parliamentary duties.

In the hope of satisfying the people and reconciling the clashing pre- [March 17, 1648.] tensions of the two Houses, an ordinance was introduced into the Commons, and immediately passed, for the appointment of three new Lords Commissioners,—the Earl of Kent, Bulstrode Whitelock, Esq., and Sir Thomas Widdrington, Serjeant-at-law. When the ordinance came up to the Lords, they insisted that there should be an equal number of their body appointed Commissioners, and added the name of Lord Grey de Werke,—with a proviso

* Lords' Jour. viii. 560, *et seq.*

that no act should be done by the Commoners, unless with the concurrence of one Peer and one Commoner. To these amendments the Commons reluctantly assented, and the ordinance was law.

Three of the new Lords Commissioners of the Great Seal were mere ciphers, and there would be no amusement or instruction in trying to trace their origin or their career; but WHITELOCK is one of the most interesting as well as amiable characters of the age in which he lived,— and as afterwards, on the deposition of His Highness the Lord Protector Richard, he was for a time sole Lord Keeper of the Great Seal under the Commonwealth, I am required to write his Life as if he had presided in the Court of Chancery and on the woolsack by the authority of an hereditary sovereign.

This distinguished republican lawyer was of an ancient family, and very proud of his seventeen descents recorded at the Herald's College. He was the only son of Sir James Whitelock, a Judge of the Court of King's Bench, and Elizabeth, daughter of Edward Bulstrode, Esq., of Hedgely Bulstrode, in the county of Buckingham, and sister of Bulstrode, the famous law reporter. He was strongly connected with the law, Sir George Croke, a Judge successively of the Common Pleas and King's Bench, and the publisher of law cases in three reigns,* being his mother's uncle. In the house of this venerable magistrate in Fleet Street, young Bulstrode Whitelock first saw the light, on the 6th of August, 1605.

After passing with credit through Merchant Taylors' school, he was entered in Michaelmas term, 1620, a gentleman commoner of St. John's College, Oxford. Laud was then the master of the College, and from him he received many kindnesses, which he never afterwards forgot. Having quitted the University (for what cause does not appear) without a degree he was placed in chambers in the Middle Temple, and commenced the arduous course of study necessary to fit him for the bar. [A. D. 1619.] His father was his instructer, and, together with the sound maxims of the common law, early imbued his mind with the principles of constitutional freedom, then little regarded among lawyers. The old Judge, when himself a practising barrister, had been subjected to a Star Chamber prosecution for a professional opinion he had given to a client upon the legality of a "benevolence" exacted by James I.; and when on the bench, he had differed from all his brethren in pronouncing against the power of the King and Council to commit to prison, without specifying in the warrant the cause of the commitment.† Yet he conducted himself with such propriety, that Charles I. was forced to characterize him as "a stout, wise, and learned man, and one who

* "But some amidst the legal throng
Who think to them thy streams belong,
Are forced to cite opinions wise,
Cro. Car.—Cro. Jac.—and Cro. Eliz."—*Plead. Guide.*

Judge Croke's Reports are thus cited by the names of the princes in whose reigns the cases were described.

† Darnel's case, 3 St. Tr. 1.

knew what belonged to uphold magisirates and magistracy in their dignity." While a student, young Hyde was fond of joining amusement with instruction by acting as marshal to the Judges of assize. He himself tells us that, "according to the leave he had from his father, and by his means from the several Judges, he rode all the circuits of England to acquaint himself with his native country, and the memorable things therein."

In 1628 he was called to the bar, and went the Oxford circuit, of which he afterwards became the decided leader.† He likewise rose into respectable practice in London. He sat, when very young, in the parliament which passed the "Petition of Right," and without taking any prominent part in the debates, he steadily voted for that great measure. During the long intermission of parliaments which followed, he did not mix in politics, and he seems to have associated a good deal with the courtiers. [A. D. 1628.] Being now Treasurer of the Middle Temple, he formed an acquaintance with Mr. Attorney-General Noy, to whom, he tells us, he thus came to be introduced. "A student of the Inn having died in chambers, the Society disbursed money for his funeral, which his father refused to pay. A bill was thereupon preferred against that gentleman in the Court of Requests, in the name of the Treasurer, ingeniously and handsomely setting forth the customs of the Inns of Court, with the whole matter, and praying that he might be compelled to pay the money so disbursed, with damages. Upon my carrying the bill to Mr. Attorney-General Noy for his signature, with that of the other Benchers, he was pleased to advise with me about a patent the King commanded him to draw, upon which he gave me a fee for it out of his little purse, saying, 'Here, take these single pence,' which amounted to eleven groats, 'and I give you more than an attorney's fee, because you will be a better man than an Attorney-General. This you will find to be true.' After much other drollery, wherein he delighted and excelled, we parted, abundance of company attending to speak to him all this time."

Whitelock was principal manager for the Middle Temple of the famous masque given to the Queen, by the Inns of Court, in [A. D. 1633.] confutation of "Histriomastix" against interludes, and he has left us a most circumstantial and entertaining account of it. To him was committed "the whole care and charge of the music," which he assures us "excelled any music that ever before that time had been heard in England."† His head was quite turned by the Queen's compliment, "that she never saw any masque more noble or better performed than this was, which she took as a particular respect to herself, as well as to the King her husband, and desired that her thanks might be returned to the gentlemen of the Inns of Court for it."†

He now passed his vacations in Oxfordshire, affecting while there merely to be a country squire; yet, from his knowledge of the law, he

* As a proof of this he mentions that at the last assizes for the county of Oxford which he attended, thirty-five causes were tried, and he had forty-four retainers,—his ascendency being as great in the other seven counties on the circuit.

† Mem., p. 19. ‡ Ibid. p. 22.

was called upon to preside as Chairman of the Justices of peace. Speaking of one instance which occurred in 1635, he gives us a statement containing a lively representation of the opinions and manners of the times. "At the Quarter Sessions at Oxford, I was put into the chair in Court, though I was in coloured clothes, a sword by my side, and a falling band, which was unusual for lawyers in those days, and in this garb I gave the Charge to the Grand Jury. I took occasion to enlarge on the point of jurisdiction in the temporal Courts in matters ecclesiastical, and the antiquity thereof, which I did the rather because the spiritual men began in those days to swell higher than ordinary, and to take it as an injury to the church that any thing savouring of the spirituality should be within the cognizance of ignorant laymen. The gentlemen and freeholders seemed well pleased with my charge, and the management of the business of the Sessions; and said they perceived one might speak as good sense in a falling band as in a ruff."*

He now began gradually to associate himself with those who were resisting the arbitrary measures of the Court. He exerted himself very much in resisting the encroachments of the Crown upon the rights of the landholders in Whichwood Forest, and he assisted his kinsman, Hampden, in the great case of ship money. Yet he was always moderate, and he did not wish even to take advantage of the discontents of the Scots on account of episcopacy. "I persuaded my friends," says he, "not to foment these growing public differences, nor to be any means for encouraging a *foreign nation, proud, and against our natural Prince.*" He still continued intimate with Hyde, Falkland, and the more reasonable reformers.

When the Long Parliament was summoned, he stood for Great Marlow, and was beaten by unfair means; but upon a petition it was pronounced by the House of Commons to be a void election,—and on a new writ being issued he was returned. [JAN. 1641.] He made his maiden speech, in the debate which arose upon the motion that Selden, and the other members of the House who were illegally imprisoned in 1629, should receive indemnification out of the estates of the Judges who had been parties to the judgment of the Court of King's Bench,—his own father being alleged to be one of them;—and he at once defended his father's memory and his own patrimony, by showing that his father had expressed a clear opinion for admitting the defendants to bail, and had himself undergone persecution in behalf of the liberty of the subject.

So favourable an impression did he make by the earnestness and modesty of his demeanour on this occasion, that he was elected chairman of the committee appointed to draw up the impeachment against Lord Strafford, and employed by the House to manage the seven last articles of the impeachment. He objected to have any thing to do with one of them, which charged the Earl with a design of bringing over the army of Ireland for the purpose of reducing England to subjection, as not

* Mem. p. 23.

being supported by sufficient evidence, "thinking it not honourable for the House of Commons to proceed upon an article whereof they could not make a clear proof." On his motion this article would have been struck out, had it not been warmly supported by Sir Walter Earle. Whereupon it was retained and assigned to this gentleman to manage; but he made such a wretched hand of it, that the Queen, inquiring his name, said, "that water-dog did bark but not bite, but the rest did bite close." Strafford himself bore testimony to the candour and fairness, as well as talent, with which Whitelock discharged his part in the prosecution. "Glynne and Maynard," he said, "used him like advocates; but Palmer and Whitelock like gentlemen, and yet left out nothing that was material to be urged against him." Whitelock bears ample testimony to the admirable defence of the noble culprit. "Certainly," says he, in closing his touching narrative of Strafford's trial and execution, "never any man acted such a part on such a theatre, with more wisdom, constancy, and eloquence, with greater reason, judgment, and temper, and with better grace in all his words and gestures, than this great and excellent person did, and he moved the hearts of all his auditors, some few excepted, to remorse and pity."*

At this time it depended a good deal upon accident to which party Whitelock should be permanently attached, for some with whom he now co-operated became the chief advisers of the King, in carrying on the war against the parliament, and others afterwards assisted in bringing the King to the scaffold, and in abolishing monarchy in England. He himself still supported pacific measures; and in the debate on the bill for arming the militia, he joined with those who urged that the King should be again petitioned to place the sword in such hands as he and the parliament should jointly nominate, and "who would be more careful to keep it sheathed than to draw it." When the ordinance of the two Houses upon this subject passed without the concurrence of the King, whereby in reality his authority was renounced, though all in public employment continued to swear allegiance to him,—Whitelock had serious thoughts of joining the royalists, or of retreating into private life; but he was persuaded by the leaders of the popular party that they had no purpose of war with the King, and that they were only arming to defend themselves and the liberties of the nation. Accordingly he agreed to continue to keep his station in the House of Commons at Westminster, and he accepted a commission as a deputy-lieutenant in the military array about to be organized in Bucks and Oxfordshire, where his property and family connexions chiefly lay. Still he implored the parliament to make the experiment of further overtures of peace, and to name a committee to review the former propositions which the King had rejected. He drew a lively picture of the silent but rapid strides which lead to civil war. "We scarcely know how, but from paper combats by declarations, remonstrances, protestations, votes, messages, answers, and replies, we are now come to the question of raising forces, and

* Mem. 44.

naming the general and officers of an army. But what may be the progress hereof the poet tells you:—

> "Jusque datum sceleri canimus, populumque potentem
> In suâ victrici conversum viscera dextrâ."*

The die, however, was now cast; and instead of being, like Hyde, Chancellor of the Exchequer to Charles I. and Lord Chancellor to Charles II., Whitelock was destined to draw an ordinance for establishing a pure republic in England, and to hold the Great Seal under a Lord Protector.

When he heard of the King erecting the royal standard at Nottingham, instead of going to fight under it, he accepted the command of a company of horse in Hampden's regiment, composed of his tenants and neighbours in Oxfordshire; and, marching against the royalist commander, Sir John Biron, he took military possession of Oxford, "being welcomed by the townsmen," he tells us, "more than by the scholars." In consequence, a regiment of horse of Prince Rupert's brigade quartered themselves in his house, Fawley Court, near Henley, and "indulging in excess and rapine of every kind, destroyed his books, deeds, and manuscripts, cut open his bedding, carried away his coach and four horses and all his saddle-horses, killed his hounds, of which he had a very fine pack, and destroyed all his deer and winged game."

He was so much horrified by the ravages of civil war, that his martial ardour very quickly subsided; and, leaving the field of arms to those who had a greater taste for it, he returned to his post in the parliament, and ever after, as a civilian, steadily supported the popular side.

We next find him on a very different scene—as a lay member of the famous Assembly of Divines at Westminster.† Here, in conjunction with Selden, he in vain combated the position that presbytery was *jure divino*, and that no human legislature had a right, in any degree, to interfere with or control the Presbyterian church,—and he was branded with the opprobrious appellation of "Erastian." He was more successful when the resolution of the Assembly in favour of the "Covenant" came to be debated in the House of Commons, although, on one occasion, he could only prevent its being carried by making a very long and wearisome speech against time, till a sufficient number of "*Independent*" members could be got together, who, for the nonce, coalescing with a small body of *Episcopalians*, threw it out.

In January, 1643, he was named, along with Holles and other popular leaders, a Commissioner to carry propositions of peace to the King at Oxford. This appears to have been a very disagreeable service, although they had a safe conduct. At the inn where they were stationed during the negotiation, a great bustle being heard in the hall, it was found that some of the officers of the royal army had fallen foul of the Commissioners' servants, calling them, and their masters, and the parliament who had despatched them, "rogues, rebels, and traitors."

* Mem. 61. † Mem. 99.

The Commissioners having ascertained the cause of the disturbance, behaved with becoming spirit. "Holles went presently to one of the King's officers, a tall, big, black man, and taking him by the collar shook him, and told him it was basely and unworthily done of them to abuse their servants in their own quarters, contrary to the King's safe conduct, and took away his sword from him.—I did the same," adds Whitelock, "to another great mastiff fellow, an officer also of the King's army, and took his sword from him."* Nevertheless, they fell under a lively suspicion of having, during this mission, intrigued with the King, and betrayed the parliament. Having paid a visit of courtesy to the Earl of Lindsey, who lay at the royal quarters languishing from the mortal wounds he had received in the battle of Edge Hill, the King, attended by Prince Rupert, came, as if casually, into the chamber, and, after many professions of esteem for their persons and characters, requested their advice as to the answer he should give to the propositions of the parliament, and desired them to confer together and set down something in writing that might be fit for him to say, with a view to bring about a happy settlement of all differences. They, acting with perfect good faith to their party, retired into another room, and having agreed on such a declaration as they thought might best tend to a pacific issue of the negotiation, Whitelock wrote it out in a feigned hand and left it on a table, where Charles soon found it. This had been perceived by the Lord Saville, one of the King's attendants, who shortly afterwards revolted to the parliament. He, joining the Presbyterian party, who were eager to get rid of Holles and Whitelock, accused them to the House of being well affected to the King, and of having secretly corresponded with him during their residence at Oxford. The charge was referred to a select committee, who, after a long inquiry, reported in favour of the accused, being mainly influenced by the bad character of the accuser. "Thus ended this knotty and malicious prosecution in the honourable discharge of those two great men. Mr. Whitelock absented himself from the House when they came to give judgment. It was observed that most if not all of the gentlemen of the best interest and quality in the House were for acquitting of them, and that it had never been known in any affair before that held so many days that the young gentlemen and others who were wont, whatever business was in agitation, to go out to dinner or to some refreshments and diversions, should attend so constantly at the time that business was in debate, and not stir from it."†

[A. D. 1643.]

Whitelock, although he never deserted his political associates, seems

* Mem. 67.

† Life of Whitelock, p. 51. This passage shows us that even when the house met at eight in the morning, and in the fervour of the Long Parliament, *dinner* caused a serious interruption to the proceedings of the legislature. The hour of twelve approaching, "the young gentlemen and others" disappeared, and the House was deserted. Whether the system of *pairing* had then begun I do not find, but in all probability a *Presbyterian* and an *Independent*, differing on every thing else, often came to an understanding that they should go out together to dine at the ordinary.

to have talked of them very freely, even to their opponents. Clarendon asserts positively, that both during the negotiations at Oxford, and at the treaty of Uxbridge in the following year, where also Whitelock was one of the parliamentary Commissioners, and was in daily intercourse with the King's Commissioners, whom he had formerly familiarly known, "he used with them his old openness, and professed his detestation of all the proceedings of the parliamentarians, yet could not leave them."

In the struggle which soon arose between the early leaders of the popular party and him who was now striving to supersede them, and to get all power into his own hands, Whitelock long strenuously opposed the plan, which he detested, for the establishment of a military government. He spoke and voted against "the self-denying ordinance" as a device, not only to put down the Presbyterian sect, whom he still disliked, but to strip all civil functionaries of office and of influence. Nevertheless, ever a timid and time-serving politician, he would not quarrel with Cromwell; and when consulted by the Lord General Essex and his friends, whether the leader of the Independents might not be proceeded against as an "Incendiary," he advised them to wait for better proofs before they ventured to attack a person of such quick and subtle parts, and who had secured such an interest in the House of Commons.

When Cromwell's ascendency had been established, Whitelock completely succumbed, being desirous of doing as much good as he could for his country and for himself under the domination which he had mildly attempted to prevent. Cromwell now treated him with consideration and kindness, and defeated a plan of [A.D. 1647.] his enemies to get rid of him, by sending him "Lord Justice into Ireland," saying "*he was against his going away*," and desiring his company, began to use his advice in the administration of civil affairs.

Whitelock, while he did his duty in Parliament, attended zealously to his profession. The civil war being over, the practice of the law was very flourishing, and he was not only the favourite leader of the Oxford circuit, but had the first business in Westminster Hall.

In September, 1647, the offer was made to him of being elected Recorder for the City of London; but he declined the appointment, as he thought it might interfere with the great object of his ambition, which was to preside in the Court of Chancery.

We have seen how, in March, 1648, he was, by an ordinance of the two Houses, named Lord Commissioner of the Great Seal, along with the Earl of Kent, Lord Grey de Werke, and Sir Thomas Widdrington. The following is his own modest account of this transaction:—"These Commissioners were said to be agreed upon by the private junto of Cromwell's party beforehand to be trusted with this great charge; and in the debate of the business, several others of both Houses were propounded; but, after a great debate, these three only were pitched upon.

"The Earl of Kent, being a very honest just man, of good rational parts and abilities, and of an ancient great family, who would be a

countenance to this business, was held a fit person for the Lords' House.

"Sir Thomas Widdrington, being a gentleman of known integrity, and of great abilities in his profession, and brother-in-law to the General, whose sister he had married, was very fit to be one of the House of Commons to be intrusted with so weighty an employment.

"I was less considerable than the other in all respects, yet was well known and understood in the House by my long attendance there, and by them judged not incapable of this employment. Besides, the General had an affection for me, and he had a good interest in the House, and Cromwell and his party were willing to engage me as far as they could with them.

"I can truly say I never heard of this business beforehand, nor was in the least privy to it or acquainted with it; but God was pleased so to order it, not my ambition that sought or contrived it, for I may be believed on much experience, that such employments are not desirable by a prudent and quiet spirit; they seldom afford quiet, never safety. I was at this time on the circuit in great practice, wherein none of my profession had a greater share than myself, and at Gloucester received this unexpected news. The counsel, the officers, and the attorneys, with great respect and much civility, wished me joy of that honourable employment. I sent to my friends of the House to know if my present attendance was expected by the House; but that without a special summons I did not intend to return to London till after the circuit should be ended, where I was engaged in many men's businesses."*

Serjeant Widdrington was at this time likewise upon his circuit, and it was ordained "that, till the beginning of the next term, the Lords Kent and Grey should be empowered to seal all commissions and writs." The two noble Commissioners were accordingly both sworn in forthwith in the presence of both Houses. Although the King was now in solitary confinement in Carisbrook Castle, allowed to see no one but "the decrepit old man who kindled his fire," and "the vote of non-addresses" had passed, by which the House of Commons had resolved that they would have no farther communication with him, and that if any other persons did so, without leave, they should be subject to the penalties of high treason,—the Earl of Kent and Lord Grey began with swallowing the old oaths of "allegiance and supremacy," and having farther taken the oath of office, and the oath under the triennial act, the Earl of Manchester, Speaker of the House of Lords, surrendered the Great Seal into their hands.†

On the first day of Easter term, Whitelock and Widdrington having returned from the circuit, were sworn in with the same solemnity, and the four Lords Commissioners went in procession from the House of Lords to the Court of Chancery, in Westminster Hall, having the Great Seal carried before them.‡ A salary of 1000*l.* a year was voted to

* Mem. 293. † Lords' Journ. x. 116, 117. ‡ Whitl. 300.

each of them, to be paid out of the revenue of the customs, in full of all pensions, fees, wages, and allowances from the Crown.*

A few days after they had been installed, the Lords Commissioners went into the Court of Exchequer, and having taken their seats on the bench, with the Barons on each hand of them, a great many lawyers and others standing round, they swore in Mr. Serjeant Wilde to be Chief Baron.† Lord Commissioner Whitelock appears always to have taken the lead, and he now thus began his address to the new Judge:— [May, 1648.]

"Mr. Serjeant Wilde,

"The Lords and Commons in parliament, taking notice of the grea inconveniency in the course of justice for want of the ancient and usual number of Judges in each of the high Courts of Westminster, whereby is occasioned delay, and both suitors and others are the less satisfied, and desirous and careful that justice may be administered *more majorum*, equal rights done to all men according to the custom of England; they have resolved to fill up the benches with persons of approved fidelity and affection to the public, and of piety, learning, and integrity; and having found by long experience among themselves, that you, Mr. Serjeant Wilde, are a person thus qualified, and very well deserving from the Commonwealth, they have thought fit to place you in one of the highest seats of judicature, and have ordained you to be Lord Chief Baron of this Court. The freedom of this choice, without seeking or other means of promotion, this public consent for your preferment, cannot but bring much satisfaction to your own conscience, and encouragement to your endeavours, against all burdens and difficulties which attend so great and weighty an employment." [A.D. 1648.] He then proceeds at enormous length to dilate upon the antiquity of the Court of Exchequer, and the dignity and duty of the Chief Baron. On this last topic he says, "The life of a Judge is *militia quædam*, if not *martyrium quoddam*, in both which courage is requisite against the assaults, of friends of family, of servants, and the many importunities and temptations which he shall meet withal: and a martyr he must be in bearing provocations, censures, scandals, and reproaches, which will be cast upon every Judge; one party being always displeased, and not sparing, especially in these times, to censure the judgment, be it never so upright. He must want no courage to resist even the highest and greatest powers." He concludes with a warning which one might have hoped would have been unnecessary for the republican Judge. "Hate covetousness, which embraceth bribery. Bribery doth

* Com. Jour., v. 528. Whitelock says he was a loser by his elevation, as his professional income had amounted to 2000*l.* a year.

† At this time there was great promotion in the law by order of the two Houses on the recommendation of the Lords Commissioners; Serjeant Rolle being made Lord Chief Justice of the King's Bench; Jermyn and Browne, puisne Judges of that Court; Solicitor General St. John, Chief Justice of the Common Pleas; Beddingfield and Cresswell, puisne Judges of that Court; Serjeant Wilde, Chief Baron of the Exchequer; and Gates a puisne Baron.

blind the eyes of the wise and pervert judgment. How odious this was to the people of Rome, appears by the oration of Piso, in the senate, mentioned in Tacitus; and in our nation, by the great examples of Justice upon corrupt Judges, as in Edward I.'s time, when the Lord Chief Baron, among others, was ransomed at 30,000 marks, which in our account at this day is 10,000*l*." He softens all however by the quotation—

> "Qui monet ut facias quod jam facis, ille monendo
> Laudat et hortatu comprobat acta suo."

The same term there was a still more elaborate display of his learning and eloquence on a "call of Serjeants," in which Lord Commissioner Whitelock was himself included. The new Serjeants having presented themselves at the bar, he thus addressed them:* "That it had pleased the parliament in commanding these writs to issue forth, to manifest their constant resolution to maintain the old settled form of government and laws of the kingdom,† and to manifest their respect for the profession of the law, and to bestow a particular mark of favour upon them as eminent members of it." He then proposes to discourse on the antiquity and dignity of "the order of the Coif," stating many reasons for undertaking the task,—more especially "his own affection to the degree, he being himself the son of a Serjeant, and having the honour to be one of their number in this call, and acknowledging that both in his descent and fortune he was a great debtor to the law." He is particularly indignant when he comes to wipe off an aspersion cast upon the Serjeants by a libellous author, that formerly they publicly plied for business, each having a stand which was against one of the pillars in St. Paul's Cathedral,—"that they kept their pillars at Paul's where their clients might find them,"—as if they did little better than *emendicare panem*. He explains this by the custom, upon a call, of every one of them being brought to a pillar in Paul's, and there left for a time for private devotion: "Our English poet Chaucer (whom I think not improper to cite, being one of the greatest clerks and wits of his time) had a better opinion of the state of a Serjeant, as he expresseth in his prologue of 'The Serjeant:'—

[A.D. 1648.]

> "A Serjeant at law, wary and wise,
> That oft had been at the Pervise
> There was also, full of rich excellence,
> Discreet he was, and of great reverence."

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* The Commissioners of the Great Seal having sat in the Court of Chancery hearing motions till past two o'clock, the new Serjeants presented themselves in their party-coloured robes with gentlemen of the Inns of Court. Then came the Judges of the King's Bench, and the Commissioners and Judges went into the Court of Common Pleas, where they took their places on the Bench. When the new Serjeants had counted,—their *Colts* delivered rings—first to the Earl of Kent, then to Lord Grey, next to Lord Commissioner Whitelock, then to the Chief Justice, and the other Judges according to their rank.—*Whit. Mem.* 356.

† N. B. They were now deliberating about the King's trial,—to be followed by the suppression of the House of Lords and abolition of monarchy.

"And in his description of the Franklin he saith of him:—

"At Sessions there was he Lord and Sire,
Full oft had been Knight of the Shire,
A Sheriff had been, and a Countour;*
Was nowhere such a worthy Vavasour."†

"Brook saith that *Serviens ad legem est nosme de dignite comme chevalier;* and it is *character indelibilis*, no accession of honour, or office, or remotion from them takes away this dignity, but he remains a Serjeant still. Their robes and officers, their bounty in giving rings, their feasts, which Fortescue saith were *coronationis instar*, and continued anciently seven days, and Kings and Queens were often present at, and all ceremonies and solemnities in their creation do sufficiently express the state due unto them."‡ He concludes by giving some wholesome advice, the necessity for which does not exalt our ideas of the liberality and honour of the bar in those days; "For your duty to particular clients you may consider that some are rich; yet with such there must be no endeavour to lengthen causes to continue fees. Some are poor; yet their business must not be neglected if their cause be honest. Some are peaceable; stir them not to strife. Some are contentious; advise them to reconcilement with their adversary. Amongst your clients, and all others, endeavour to gain and preserve that estimation and respect which is just to your degree, and to an honest and discreet person. Among your neighbours in the country, never foment, but pacify contentions. The French proverb is— [A.D. 1648.]

'Bonne terre, mauvais chemin;
Bon avocat, mauvais voisin.'

I hope this will never be turned by any here into English."

It seems marvellous to us, although we live in quiet and dull times,

* Serjeant. † An ancient title of nobility.

‡ Without any disrespect to the coif I must be allowed to say, that the result of an investigation I had once occasion to make on this subject, was, that anciently the Serjeants, after going into Court at eight, and dining at twelve, did regularly repair in the afternoon to Paul's to meet their clients who resided within the walls of the city of London. This is corroborated by the assignment of a pillar to each on their call, and by the quotation from Chaucer;—for the "Pervise" was a sort of *Exchange* at Paul's, where all ranks met to do business. But there was nothing discreditable in this custom. In those times, and long afterwards, barristers of every degree were consulted without the intervention of attorneys. An attorney was only employed in the actual processes of the Court. Even in Anne's reign the counsellor used to see his clients, before breakfast and at night, at the coffee-houses around the temple. (See *The Spectator.*) An eminent counsel in the reign of George IV. talked of reviving this practice, when the attorneys conspired against him. I suppose that, in those days, the Serjeant or barrister made up his own brief, and himself took what fee he could bargain for, or was customary, from the client. The attorney has now become an adviser, and keeps the key of the barrister's chambers.—So the apothecary has invaded upon the physician.—The young barrister had then also the stewardship of manors; settlement-drawing, even when on circuit—(See *The Clandestine Marriage*, and Hogarth's *Marriage à-la-Mode*)—all now usurped by attorneys.—But it is said that some provincial counsel still "keep the market" in the towns near which they reside.

that sensible men could then have felt an interest in such mummeries. The treaty of Newport, the last attempt at reconciliation with Charles, had just been broken off, and the crisis of the struggle between the parliament and the army was close at hand. After a debate in the Commons, which lasted three whole days and one night, a resolution was passed against Cromwell's party, "that the offers of the Sovereign furnished a sufficient ground for the future settlement of the kingdom."* —The remedy prescribed for such disorders was *Pride's purge*.

The Lords Commissioners had appointed the following day for holding their "second seal after term." [Dec. 7, 1648.] When they arrived at the House of Lords' door, a little before eight, they found two troopers there, who denied them entrance, till saying "they were going about Chancery business," they were allowed to pass. They found the Court of Requests, the stairs of the House of Commons, and the passage from thence leading down to Westminster Hall, full of soldiers. While they were meditating retreat, Lord Grey de Groby, who was acting in concert with Colonel Pride, came up to them, and advised them to sit, assuring them that they were in no danger, and that the preparations they saw were only against *malignant* members of the House of Commons. They accordingly proceeded to the Court of Chancery, and began to call over the bar for motions. In a little time Lord Commissioner Widdrington was fetched away by a message from Cromwell, who expressed a desire to see him; and a member of the House of Commons came into Court, and mentioned how all who had voted in the preceding night were refused permission to take their seats, and many of them had been made prisoners. The Lords Commissioners thereupon rose, thinking that the counsel and suitors could not attend with freedom, and not being without apprehensions for their own personal safety. The Earl of Kent and Lord Grey de Werke asked Lord Commissioner Whitelock to go with them to the House of Peers, where they were sure to be protected. On their way thither they met Colonel Pride and Lord Grey de Groby, watching for obnoxious members, many of whom they had secured; but the Lords Commissioners were allowed to pass unmolested. They were advised by the assembled Peers to return to the Court of Chancery,—but Whitelock would not act without the sanction of the House of Commons. He proceeded thither, and stated the doubt which he and his brother Commissioners entertained as to whether, in the existing confusion, they should sit or adjourn. The party now dominant, afraid of the imputation upon the army, that they interrupted the course of justice, advised the Commissioners by all means to sit, and proceed to business. Whitelock then went to the Court of Wards, where he was joined by the two Peers and Widdrington, and they sat till six in the evening,—when the soldiers were gone, and all was tranquil. Meanwhile Pride excluded ninety-six members and imprisoned forty-seven, reducing the assembly, once so numerous and respectable, to a small number of individuals,

* 3 Parl. Hist. 1239.

who, in the quaint language of the times, were afterwards dignified with the appellation of the "Rump."

As soon as the Court rose, Whitelock and Widdrington went to the house of Lenthal, the Speaker and Master of the Rolls in Chancery Lane, where they met General Cromwell, and had a long conversation with him respecting the present posture of affairs,—he trying to persuade them that he still hoped for a settlement with the King. Two days afterward he made them draw up a paper for general circulation, to palliate the violence offered to the House of Commons, and holding out a prospect of the restitution of the secluded members.

But on the 23d of December a debate arose in the Commons on the proposal for bringing "delinquents" to justice, in which the design of taking off the King was distinctly avowed. Several members made no scruple to mention his Majesty by name, as "the greatest delinquent," and as such to be brought to justice. They said he had been guilty of treason against the nation, and it remained for the representatives of the nation to bring him to punishment; he had shed the blood of man, and God made it a duty to demand his blood in return. They urged that the life of the King was incompatible with their safety; if he were restored, they would become the objects of royal vengeance; if he were detained in prison, the public tranquillity would be disturbed by a succession of plots in his favour; and though in private assassination there was something base and cowardly, from which all Englishmen revolted,—to bring him to a public trial would be to proclaim their confidence in the goodness of their cause, would give to the world a splendid proof of the sovereignty of the people and of the responsibility of Kings, and would shed glory on the English name to the latest generations.

Whitelock, and several other members still allowed to sit, disapproved of this course, and contended that the person of the King was sacred; that history afforded no precedent of a sovereign compelled to plead before a judicature composed of his own subjects; that measures of vengeance could only serve to widen the bleeding wounds of the country; and that a deed which would be regarded with horror by the nation would only hasten a reaction in favour of those arbitrary principles which they had hitherto so successfully combated.

Cromwell pretended to be neuter, "Sir," said he, "if any man whatsoever have carried on this design of deposing the King and of disinheriting his posterity, or if any man have still such a design, he must be the greatest traitor and rebel in the world; but since Providence has cast this upon us, I cannot but submit to Providence, though I am not yet prepared to give you any advice." His wish was well known to be strongly in favour of the measure, and the fear of seclusion and of personal violence lowered the tone and lessened the numbers of its opponents. They did not venture to divide the House, lest their names should be handed about like those of the "Straffordians," and a committee of thirty-eight members was appointed to receive informations and examinations, and to prepare charges against the King and all other delinquents whom it might fit to bring to condign punishment.*

* 3 Parl. Hist. 1253.

On the 26th of December the Lords Commissioners Whitelock and Widdrington received a summons to attend this Committee. It would have been a great advantage to Cromwell if he could have prevailed on either of them to preside in the High Court of Justice he was planning, from their reputation as lawyers, and the authority they had gained by having sometime filled the highest office in the law; and he had hopes of overcoming their scruples, the one being his kinsman, and the other his fast friend. But he was disappointed. They happened to be consulting together on a case which had been argued before them when the summons was served upon them. Whitelock immediately announced his resolution "not to meddle with the King's trial, it being quite contrary to his judgment, as he had freely declared himself in the House." Widdrington said he was of the same opinion, but that he knew not where to go out of the way, that the Committee might not know where to send for him. Whitelock replied, "My coach is ready: I had made up my mind to go out of town this very morning, on purpose to avoid this unhappy business. I pray you go along with me: I shall be glad of your company, and we may remain quiet at my country-house till it is over."

They instantly drove off, and remained concealed till the trial was actually begun. They certainly would have acted a more manly part if they had boldly attempted to prevent that which they so much condemned; and if Bradshaw sincerely approved of the prosecution, he incurred less moral guilt than they, by accepting the office which they declined.

After their flight, all opposition to the proceeding ceased in the Commons. A preliminary resolution was unanimously voted, "that, by the fundamental laws of this kingdom, it is treason in the King of England to levy war against the parliament and kingdom of England;" and an ordinance was unanimously passed constituting a Court of Justice, to consist of the four Lords Commissioners of the Great Seal, the two Chief Justices, the Chief Baron, the Lord Fairfax, Lieutenant-General Cromwell, Serjeant Bradshaw, and various other noblemen, members of the House of Commons, and military officers, for the trial of Charles Stuart for the various treasonable offences recited in the preamble,— which roundly asserts that he is guilty of them, and that he is deserving of condign punishment.

When the resolution and ordinance came to be discussed in the upper House, there were only thirteen Peers present, the rest being kept away by apprehension, although no actual violence had been used to exclude them. The Earl of Manchester remembered that, when Lord Kimbolton, he had been himself very irregularly prosecuted for high treason by the King's personal order, and knew that it was certainly then intended to proceed to extremities against him and the five members of the House of Commons. Yet he began the debate, and generously moved to negative the resolution, and to reject the ordinance. He showed that, by the fundamental laws of England, the parliament consists of King, Lords, and Commons; that the King only hath power to

call and dissolve them, and to confirm all their acts; that, without him, there can be no parliament; and therefore that it was absurd to say, "the King can be a traitor against the parliament."

The Earl of Northumberland, who had taken the popular side throughout the contest, now said, "the greatest part, even twenty to one, of the people of England were not yet satisfied whether the King made war against the Houses first, or the Houses first against him; and, besides, if the King did levy war first, there was no law extant to make it treason for him to do so." The Earl of Denbigh complained that the Commons had had the presumption to put in his name as one of the King's Judges, and swore that he would sooner be torn in pieces than have any share in so infamous a transaction. The motion being put, it was carried, *nemine contradicente;* and the Lords, rashly presuming that nothing could be done in the way of legislation without their assent, and resolving to avoid any importunity upon the subject, adjourned for a week. But before that week expired, the shadow of their power had vanished.

The Commons having gone through the form of appointing a committee to examine the Lords' Journals, for the purpose of finding what they had done upon the resolution and ordinance sent up to them respecting the trial of Charles Stuart, and having had a long debate with closed doors, came to the following resolutions: "That the people are, under God, the original of all just power; that the Commons of England in parliament assembled, being chosen by and representing the people, have the supreme power in the nation; and that whatsoever is enacted or declared for law by the Commons in parliament assembled hath the force of law, and all the people of this nation are concluded thereby, although the consent of King or House of Peers be not had thereunto." They then passed an ordinance for the trial of the King in the same terms as the former, only omitting all notice of the Lords.

At the same time it was resolved to have a new Great Seal instead of that hitherto used, which bore the King's name and insignia. A committee appointed to consider the subject reported, that the new Great Seal ought to have on one side the map of England, Ireland, Jersey, and Guernsey, with the arms of England and Ireland, and the inscription, "the Great Seal of England, 1648;"—and that on the other side there should be a representation of the House of Commons sitting,—with the Speaker in the chair,—and the inscription, "In the first year of freedom, by God's blessing restored, 1648." This Seal was immediately ordered, and a sum of 60*l.* was voted towards the expense of making it.*

[JAN. 9, 1649.]

Lords Commissioners Whitelock and Widdrington remained in concealment till they heard that the High Court of Justice had met, had elected Serjeant Bradshaw for President, and had made all the preliminary arrangements for the trial. On the 20th of January, the day when the trial actually began in Westminster Hall, they did not appear

* 2 Parl. Hist. 1255, 1256, 1257, 1258. Com. Jour. vi. 115.

The Commissioners having ascertained the cause of the disturbance, behaved with becoming spirit. "Holles went presently to one of the King's officers, a tall, big, black man, and taking him by the collar shook him, and told him it was basely and unworthily done of them to abuse their servants in their own quarters, contrary to the King's safe conduct, and took away his sword from him.—I did the same," adds Whitelock, "to another great mastiff fellow, an officer also of the King's army, and took his sword from him."* Nevertheless, they fell under a lively suspicion of having, during this mission, intrigued with the King, and betrayed the parliament. Having paid a visit of courtesy to the Earl of Lindsey, who lay at the royal quarters languishing from the mortal wounds he had received in the battle of Edge Hill, the King, attended by Prince Rupert, came, as if casually, into the chamber, and, after many professions of esteem for their persons and characters, requested their advice as to the answer he should give to the propositions of the parliament, and desired them to confer together and set down something in writing that might be fit for him to say, with a view to bring about a happy settlement of all differences. They, acting with perfect good faith to their party, retired into another room, and having agreed on such a declaration as they thought might best tend to a pacific issue of the negotiation, Whitelock wrote it out in a feigned hand and left it on a table, where Charles soon found it. This had been perceived by the Lord Saville, one of the King's attendants, who shortly afterwards revolted to the parliament. He, joining the Presbyterian party, who were eager to get rid of Holles and Whitelock, accused them to the House of being well affected to the King, and of having secretly corresponded with him during their residence at Oxford. The charge was referred to a select committee, who, after a long inquiry, reported in favour of the accused, being mainly influenced by the bad character of the accuser. "Thus ended this knotty and malicious prosecution in the honourable discharge of those two great men. Mr. Whitelock absented himself from the House when they came to give judgment. It was observed that most if not all of the gentlemen of the best interest and quality in the House were for acquitting of them, and that it had never been known in any affair before that held so many days that the young gentlemen and others who were wont, whatever business was in agitation, to go out to dinner or to some refreshments and diversions, should attend so constantly at the time that business was in debate, and not stir from it."†

[A.D. 1643.]

Whitelock, although he never deserted his political associates, seems

* Mem. 67.

† Life of Whitelock, p. 51. This passage shows us that even when the house met at eight in the morning, and in the fervour of the Long Parliament, *dinner* caused a serious interruption to the proceedings of the legislature. The hour of twelve approaching, "the young gentlemen and others" disappeared, and the House was deserted. Whether the system of *pairing* had then begun I do not find, but in all probability a *Presbyterian* and an *Independent*, differing on every thing else, often came to an understanding that they should go out together to dine at the ordinary.

to have talked of them very freely, even to their opponents. Clarendon asserts positively, that both during the negotiations at Oxford, and at the treaty of Uxbridge in the following year, where also Whitelock was one of the parliamentary Commissioners, and was in daily intercourse with the King's Commissioners, whom he had formerly familiarly known, "he used with them his old openness, and professed his detestation of all the proceedings of the parliamentarians, yet could not leave them."

In the struggle which soon arose between the early leaders of the popular party and him who was now striving to supersede them, and to get all power into his own hands, Whitelock long strenuously opposed the plan, which he detested, for the establishment of a military government. He spoke and voted against "the self-denying ordinance" as a device, not only to put down the Presbyterian sect, whom he still disliked, but to strip all civil functionaries of office and of influence. Nevertheless, ever a timid and time-serving politician, he would not quarrel with Cromwell; and when consulted by the Lord General Essex and his friends, whether the leader of the Independents might not be proceeded against as an "Incendiary," he advised them to wait for better proofs before they ventured to attack a person of such quick and subtle parts, and who had secured such an interest in the House of Commons.

When Cromwell's ascendency had been established, Whitelock completely succumbed, being desirous of doing as much good as he could for his country and for himself under the domination which he had mildly attempted to prevent. Cromwell now treated him with consideration and kindness, and defeated a plan of [A.D. 1647.] his enemies to get rid of him, by sending him "Lord Justice into Ireland," saying "*he was against his going away*," and desiring his company, began to use his advice in the administration of civil affairs.

Whitelock, while he did his duty in Parliament, attended zealously to his profession. The civil war being over, the practice of the law was very flourishing, and he was not only the favourite leader of the Oxford circuit, but had the first business in Westminster Hall.

In September, 1647, the offer was made to him of being elected Recorder for the City of London; but he declined the appointment, as he thought it might interfere with the great object of his ambition, which was to preside in the Court of Chancery.

We have seen how, in March, 1648, he was, by an ordinance of the two Houses, named Lord Commissioner of the Great Seal, along with the Earl of Kent, Lord Grey de Werke, and Sir Thomas Widdrington. The following is his own modest account of this transaction:—"These Commissioners were said to be agreed upon by the private junto of Cromwell's party beforehand to be trusted with this great charge; and in the debate of the business, several others of both Houses were propounded; but, after a great debate, these three only were pitched upon.

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The Commissioners having ascertained the cause of the disturbance, behaved with becoming spirit. "Holles went presently to one of the [A.D. 1643.] King's officers, a tall, big, black man, and taking him by the collar shook him, and told him it was basely and unworthily done of them to abuse their servants in their own quarters, contrary to the King's safe conduct, and took away his sword from him.—I did the same," adds Whitelock, "to another great mastiff fellow, an officer also of the King's army, and took his sword from him."* Nevertheless, they fell under a lively suspicion of having, during this mission, intrigued with the King, and betrayed the parliament. Having paid a visit of courtesy to the Earl of Lindsey, who lay at the royal quarters languishing from the mortal wounds he had received in the battle of Edge Hill, the King, attended by Prince Rupert, came, as if casually, into the chamber, and, after many professions of esteem for their persons and characters, requested their advice as to the answer he should give to the propositions of the parliament, and desired them to confer together and set down something in writing that might be fit for him to say, with a view to bring about a happy settlement of all differences. They, acting with perfect good faith to their party, retired into another room, and having agreed on such a declaration as they thought might best tend to a pacific issue of the negotiation, Whitelock wrote it out in a feigned hand and left it on a table, where Charles soon found it. This had been perceived by the Lord Saville, one of the King's attendants, who shortly afterwards revolted to the parliament. He, joining the Presbyterian party, who were eager to get rid of Holles and Whitelock, accused them to the House of being well affected to the King, and of having secretly corresponded with him during their residence at Oxford. The charge was referred to a select committee, who, after a long inquiry, reported in favour of the accused, being mainly influenced by the bad character of the accuser. "Thus ended this knotty and malicious prosecution in the honourable discharge of those two great men. Mr. Whitelock absented himself from the House when they came to give judgment. It was observed that most if not all of the gentlemen of the best interest and quality in the House were for acquitting of them, and that it had never been known in any affair before that held so many days that the young gentlemen and others who were wont, whatever business was in agitation, to go out to dinner or to some refreshments and diversions, should attend so constantly at the time that business was in debate, and not stir from it."†

Whitelock, although he never deserted his political associates, seems

* Mem. 67.

† Life of Whitelock, p. 51. This passage shows us that even when the house met at eight in the morning, and in the fervour of the Long Parliament, *dinner* caused a serious interruption to the proceedings of the legislature. The hour of twelve approaching, "the young gentlemen and others" disappeared, and the House was deserted. Whether the system of *pairing* had then begun I do not find, but in all probability a *Presbyterian* and an *Independent*, differing on every thing else, often came to an understanding that they should go out together to dine at the ordinary.

to have talked of them very freely, even to their opponents. Clarendon asserts positively, that both during the negotiations at Oxford, and at the treaty of Uxbridge in the following year, where also Whitelock was one of the parliamentary Commissioners, and was in daily intercourse with the King's Commissioners, whom he had formerly familiarly known, "he used with them his old openness, and professed his detestation of all the proceedings of the parliamentarians, yet could not leave them."

In the struggle which soon arose between the early leaders of the popular party and him who was now striving to supersede them, and to get all power into his own hands, Whitelock long strenuously opposed the plan, which he detested, for the establishment of a military government. He spoke and voted against "the self-denying ordinance" as a device, not only to put down the Presbyterian sect, whom he still disliked, but to strip all civil functionaries of office and of influence. Nevertheless, ever a timid and time-serving politician, he would not quarrel with Cromwell; and when consulted by the Lord General Essex and his friends, whether the leader of the Independents might not be proceeded against as an "Incendiary," he advised them to wait for better proofs before they ventured to attack a person of such quick and subtle parts, and who had secured such an interest in the House of Commons.

When Cromwell's ascendency had been established, Whitelock completely succumbed, being desirous of doing as much good as he could for his country and for himself under the domination which he had mildly attempted to prevent. Cromwell now treated him with consideration and kindness, and defeated a plan of [A.D. 1647.] his enemies to get rid of him, by sending him "Lord Justice into Ireland," saying "*he was against his going away*," and desiring his company, began to use his advice in the administration of civil affairs.

Whitelock, while he did his duty in Parliament, attended zealously to his profession. The civil war being over, the practice of the law was very flourishing, and he was not only the favourite leader of the Oxford circuit, but had the first business in Westminster Hall.

In September, 1647, the offer was made to him of being elected Recorder for the City of London; but he declined the appointment, as he thought it might interfere with the great object of his ambition, which was to preside in the Court of Chancery.

We have seen how, in March, 1648, he was, by an ordinance of the two Houses, named Lord Commissioner of the Great Seal, along with the Earl of Kent, Lord Grey de Werke, and Sir Thomas Widdrington. The following is his own modest account of this transaction:—"These Commissioners were said to be agreed upon by the private junto of Cromwell's party beforehand to be trusted with this great charge; and in the debate of the business, several others of both Houses were propounded; but, after a great debate, these three only were pitched upon.

"The Earl of Kent, being a very honest just man, of good rational parts and abilities, and of an ancient great family, who would be a

old courtier to sit above him, said, in a loud voice to be heard over the whole hall, "What! do you think that I will sit down before you? I have given place heretofore to Bishop Williams, to my Lord Coventry, and to my Lord Littleton: you have the same place that they had, and as much honour belongs to the place under a Commonwealth as under a King, and you are a gentleman as well born and bred as any of them: therefore I will not sit down before you." Whitelock yielded, and had the Earl of Pembroke next him, the President of the Council and the other Commissioners of the Great Seal sitting lower down.* There seems to have been full as much importance attached to such trifles in these republican times as at the Court of Charles I.

A house and grounds at Chelsea, belonging to the Duke of Buckingham, now in exile, were assigned to the Lords Commissioners as a private residence. Their general seal days after term they held in the hall of the Middle Temple, of which Lord Commissioner Whitelock continued a bencher.

Six of the common law Judges having refused to act under the parliament,—others of learning and character were appointed in their stead, and Lord Commissioner Whitelock, in swearing them in, congratulated them on being the first Commonwealth Judges, and delivered to them a lecture of enormous length, on the duties of their office, which he deduced from the Druids, who were the Judges of the Britons, and the ancient Germans, "'Graff' among whom signified both a Judge and a noble, showing the nobility of Judges."

Among Whitelock's faults and follies, it should be recorded to his honour, that he was most zealous and useful in preserving the medals, books, and monuments of learning, which having belonged to the King personally, had become the property of the state, and which certain Vandals were now eager to sell or to destroy.

I must likewise gratefully mention a noble defence which he made in [A. D. 1649.] the autumn of this year in defence of the profession of the law. One of Cromwell's officers, an ignorant fanatical fellow, had made a motion "that all lawyers should be excluded from parliament, or, at any rate, while they sit in parliament they should discontinue their practice,"—introducing his motion with a violent invective against the conduct of lawyers both in and out of the House, and being particularly severe upon their loquacity in small causes, and their silence when the lives of their clients were at stake. Whitelock showed that the multiplicity of suits in England did not arise from the evil arts of lawyers, but from the greatness of our trade,—the amount of our wealth,—the number of our contracts,—the power given to every man to dispose of his property as he pleases by will,—and the equal freedom among us, by which all are entitled to vindicate their rights by an appeal to a Court of Justice. He showed that the silence of counsellors on capital cases was the fault of the law, which kept them silent; and "he ingeniously confessed that he could not answer that objection, that a

* Whit. Mem. Life of Whit. 99. 3 Parl. Hist. 1315.

man for a trespass to the value of sixpence, may have a counsellor to plead for him; but that, where life and posterity were concerned, he was debarred of that privilege. What was said in vindication or excuse of that custom,—that the Judges were counsel for the prisoner,—had no weight in it; for were they not to take the same care of all causes that should be tried before them? A reform of that defect he allowed would be just."* He then showed the great services of lawyers in parliament, instancing Sir Edward Coke, with whom he himself had had the honour to co-operate in the beginning of the late reign, and who had carried "the Petition of Right," and the exertions of St. John, Wilde, and others in the recent struggles. He likewise pointed out the oppressive laws passed at the *Parliamentum Indoctum*, from which lawyers were excluded. "As to the sarcasms on the lawyers for not fighting, he deemed that the gown did neither abate a man's courage or his wisdom, nor render him less capable of using a sword when the laws were silent. Witness the great services performed by Lieutenant-General Jones, and Commissary Ireton, and many other lawyers, who putting off their gowns when the parliament required it, had served stoutly and successfully as soldiers, and had undergone almost as many and as great hardships and dangers as the honourable gentleman who so much undervalued them.† With respect to the proposal for compelling lawyers to suspend their practice while they sat in parliament, he only insisted that, in the act for that purpose, it be provided *that merchants should forbear their trading, physicians from visiting their patients, and country gentlemen from selling their corn or wool while they were members of that House*."‡ He was loudly applauded, and the motion was withdrawn.§

Whitelock was a most zealous man and enlightened law reformer.

* But it was nearly 200 years before that reform came, and I am ashamed to say it was to the last opposed by almost all the Judges.

† Whitelock himself served with great distinction.

‡ Life of Whitelock, 109—120.

§ Although on the rare occasions when it was my duty to speak while a member of the House of Commons, I had the good fortune to experience a favourable hearing, I must observe that there has subsisted in this assembly, down to our own times, an envious antipathy to lawyers, with a determined resolution to believe that no one can be eminent there who has succeeded at the bar. The prejudice on the subject is well illustrated by a case within my own knowledge. A barrister of the Oxford circuit taking a large estate under the will of a distant relation, left the bar, changed his name under a royal license, was returned for a Welsh county, and made his maiden speech in top-boots and leather breeches, holding a hunting-whip in his hand. He was most rapturously applauded, till he unluckily alluded to some cause in which he had been engaged while at the bar,—and when it was discovered that he was a lawyer in disguise, he was coughed down in three minutes.—It is certainly true, that success in one of these fields of exertion, by no means proves a qualification to succeed in the other; for while some parliamentary orators, like Sir Robert Peel and Lord Stanley, would have been sure to have risen to the first practice in Westminster Hall, I could name others who have deservedly acquired a high reputation in the House of Commons, who, if they had continued in Westminster Hall, would never have been intrusted with a brief.—In the other House of Parliament there is no such prejudice against the law.

The long vacation of 1649 he devoted, with the assistance of Lenthal, the Master of the Rolls, Keble, his brother Commissioner, and two or three public-spirited barristers, to a review of the practice of the Court of Chancery; and in the following term came out a most valuable set of "Orders" for correcting the abuses which had multiplied there during the late troubles, and for simplifying and expediting the conduct of suits in Equity.* These were the basis of the subsequent orders of Lord Clarendon, which are still of authority.

In the following year, on Whitelock's suggestion, a committee was appointed, over which he presided, to consider generally the improvements which might be introduced in the body of the law and the administration of justice. [A.D. 1650.]

In 1652 Whitelock prevailed on the parliament to appoint Commissioners, not members of the House, "to take into consideration what inconveniences there are in the law, and how the mischiefs that grow from the delays, the chargeableness, and the irregularities in the proceedings in the law may be prevented, and the speediest way to reform the same." At the head of this commission was placed that most learned and virtuous lawyer Sir MATTHEW HALE.

They proceeded with great vigour, meeting several times every week in the Chamber in which the Peers had formerly sat, ordering returns from the Judges and the officers in the different Courts, with their fees and duties, examining the most experienced practitioners as to defects and remedies in legal process, and entering scientifically into the whole field of English jurisprudence. They made several valuable reports, but their labours were suddenly interrupted by the violent dissolution of the Long Parliament. [APRIL 20, 1653.]

There had for some time been a great coolness between Whitelock and Cromwell, in consequence of a conversation which had passed between them respecting the future plan of government to be adopted. The elated General, after the victories of Dunbar and Worcester, and the subjugation of Ireland, sounded the Lord Commissioner as to the expediency of actually putting the Crown upon his own head; when he was told frankly that the nation would greatly prefer the *Stuarts* to the *Cromwells*, and he was advised to send for Prince Charles and to make him King, on such terms as he might prescribe, whereby he might promote the good of the nation, and for ever secure the greatness of his own family.†

Although Cromwell's carriage to Whitelock was thenceforth greatly altered, he summoned him to attend the meeting of officers of the army and leaders of the independent party, held at his lodgings in Whitehall, the night before he ordered the "bauble" to be removed from the table of the House of Commons. It was here proposed that the parliament, which had sat above twelve years, should be peremptorily required to pass an act to put an end to its existence,—ostensibly, that the nation might express its will by new representatives,—but in reality, that the

* See Appendix to Beames's Collection of Chancery Orders.
† Mem. 548.

military men might get possession of the civil offices which they considered the just reward of the perils they had undergone. Whitelock, assisted by Sir Thomas Widdrington, his late colleague, strenuously combated this project,—pointing out the glory and prosperity enjoyed under the existing system, and the danger of the attempt to set up a new government, which must lead to tyranny or anarchy,—and strongly asserting that to plot against that authority which they had sworn to respect, was neither consonant to prudence nor justifiable in conscience. The officers of the army, however, inveighed bitterly against the parliament, and declared violently for a change. Cromwell reproved them for these expressions of opinion,—from which those who knew him best conjectured that he had prompted their project, and that he was resolved at all risks to support it. The conference lasted till late at night, when my Lord Commissioner Whitelock went home weary and much troubled in his mind to see the ingratitude and indiscretion of these men. The meeting was resumed before daylight next morning, and Cromwell himself proposed that the present parliament should forthwith be dissolved by its own act, and that a joint council of officers of the army and those who had served in the House of Commons, should be appointed to rule the affairs of the republic till a new parliament could be assembled. Whitelock again earnestly protested against the formation of such a body, although it was proposed that he should belong to it, and he declared his resolution to stand by the parliament which had conferred such benefits on the country. They separated without coming to any agreement.

Historians profess themselves wholly at a loss to account for the open, imperious, and frantic manner in which Cromwell a few hours after expelled the members from the House,—which they consider as inconsistent with his general character,—not attending to the fact that to gain his object he had previously exhausted all the arts of intrigue, deceit, and hypocrisy.

The proposed Council was formed merely as the organ of Cromwell's pleasure, and he published a royal proclamation called "a Declaration by the Council," explaining the reasons of dissolving the late parliament, and requiring all persons to proceed as formerly in the execution of their offices. "The Lord Commissioner Whitelock and his colleagues were in a great quandary what to do till this declaration came out, and did not then proceed in the business of Great Seal; but in a little time, considering that they had their authority from the parliament, they went on as usual."* The truth is, that the Lord Commissioner, having given good advice, was generally of a most pliant and conforming temper when his advice had been overruled, and though free from the fumes of fanaticism, was "a waiter upon Providence." He accepted a place in the "Council of State," and though there was no cordiality between him and the President, he abstained from any active opposition to the usurped government. It would be

* Life of Whitelock, 162. Whit. Mem. 555.

difficult to say where in law or theory the sovereign power was supposed to rest between the dissolution of the Long Parliament and the "PROTECTORATE,"—but, *de facto*, under the title of "Lord General," Cromwell exercised unlimited sway.

He now resorted to the most absurd and fantastical attempt to constitute a legislative assembly recorded in the annals of any nation, by calling "Barebones' Parliament." Having succeeded in his late enterprise by means of the violent fanatics, they naturally expected to enjoy power, and his conduct can only be explained by supposing that he was resolved to give them a taste of it, and to demonstrate to them and the world that the government could not be permanently conducted on their absurd principles.

By his own fiat he named one hundred and fifty-six representatives [JULY 4, 1653.] for Great Britain and Ireland,* whose qualification was supposed to be that they were "faithful, fearing God, and hating covetousness." One hundred and twenty of these actually attended on the appointed time, and after being inflamed by "a grave, Christian, and seasonable speech" from Cromwell,—in what capacity no one could tell, except that it was believed by his admirers that, on this occasion, "the Spirit of God spoke in him and by him,"—and after they had spent several days in "seeking the Lord," praying in turn without the assistance of any chaplain, and affirming that they had never before enjoyed so much of the presence and spirit of Christ,—they at last worked themselves up to the belief that they were divinely inspired, and that the reign of the saints on earth had begun.

In this notable assembly were some persons of the rank of gentlemen; but the far greater part were low mechanics, fifth monarchy men, Anabaptists, Antinomians, Independents—the very dregs of the fanatics.

Having given but an indifferent specimen of their regard to liberty, [AUG. 5.] by prosecuting Lilburne for questioning their authority, and when he had been acquitted by a jury, confining him in the Tower, with an injunction that no obedience should be paid to any writ of habeas corpus in his behalf—they set about reforming the law. Petitions having been presented complaining of undue delays, vexations, and expenses in the conduct of Equity suits, they disdained to apply palliatives and correctives to such an evil, and resolved "that the High Court of Chancery of England shall be forthwith taken away, and that a bill be brought in for that purpose, and that it be referred to a committee to consider how the causes now depending in Chancery may be determined."

However, more difficulty was experienced in this root-and-branch reform than had been anticipated. Not only was there a great clamour among the lawyers, "the sons of Zeruiah," as they were called, but all men of sense who attended to the subject were aware that there were many most important rights for which the Courts of law afforded no

* 139 for England, 6 for Wales, 6 for Ireland, 5 for Scotland.

remedy, and that the proposed measure would be the triumph of fraud and injustice. These considerations were so palpable, that, by degrees, some members of parliament were made to understand them, and to express doubts whether, in this instance, they were not under a delusion of Satan. To give farther time for illumination, a resolution was passed to suspend all proceedings in Chancery for one month, the Lords Commissioners for the Great Seal, notwithstanding, being empowered to issue forth, under the Great Seal, "original writs, writs of covenant, and writs of entry," for the purpose of originating actions at law; but a bill for this purpose being introduced, it was finally rejected by the casting vote of the Speaker, the numbers on the division being, yeas 39, noes 39.*

The abolitionists, however, nothing daunted by this defeat, two days after carried a vote "that the bill for taking away the High Court of Chancery and constituting Commissioners [Oct. 17.] to hear and determine the causes now depending therein, formerly ordered by the House, should be forthwith proceeded with," and it thereupon was read a first and second time, and ordered to be committed. This bill was thrown out on the report; but there was a reference to a select committee to consider what was fit to be done. The committee being nominated by an abolitionist, and composed almost entirely of his party, reported "that another bill should be brought in for taking away the Court of Chancery, and appointing Commissioners to hear and determine as well causes now pending, as also future matters of Equity, and putting in order matters of law which were within the jurisdiction of that Court." Such a bill was accordingly introduced, read a first and second time, and referred to a select [Nov. 3.] committee, who recommended that the famous General Harrison should be added to their number.

But there the bill slept till the members of Barebones' parliament, themselves convinced of their own insufficiency, voluntarily resigned their authority into the hands of [Dec. 12, 1653.] him from whom they had received it, without having passed one single act since they met.†

In the meanwhile Lord Commissioner Whitelock had set out on an embassy to Christina, Queen of Sweden. Cromwell was desirous of having him out of the way during the [Nov. 2, 1653.] execution of the scheme now nearly matured; and he himself, despairing of being able to ward off the dangers which threatened his Court, was not displeased to submit to this honourable exile, although he had, some months before, peremptorily refused the offer that he should go to Ireland at the head of a Commission to settle the affairs of that island.

* For the Proceedings of Barebones' Parliament, see 3 Parl. Hist. 1381—1414.

† A tract on the abuses of the Court of Chancery, published soon after, describes with much drollery the consternation of the legal profession while the bill was depending for abolishing the Court of Chancery: "how sad and sorrowful were the lawyers and clerks for the loss of their great Diana, with their great joy and making of bonfires and drinking of sack, when they were delivered from their fears by the dissolution of the parliament."

CHAPTER LXXI.

LORDS KEEPERS DURING THE PROTECTORATE OF OLIVER CROMWELL.

[July 6, 1654.]

Whitelock remained absent from England till the 6th of July in the following year, and on his return found Cromwell regularly installed in the office of Lord Protector, and about to meet a parliament called on the soundest principles of representative government. Scarcely had the Lord Commissioner landed at Gottenburgh on his way to Upsal, when Cromwell, with ill-affected reluctance, agreed to take upon him the office of Chief Magistrate of the State, with the power, though without the name of King,—pretending that it was forced upon him by the army, and that the public tranquillity required that he should accept it. Lords Commissioners Lisle and Keble attended the procession to Westminster Hall when this pageant was enacted—jointly carrying the Great Seal before him as he passed through two lines of military, accompanied by the Judges and the Lord Mayor of London; and they administered to him an oath that he would be faithful to the Commonwealth, and rule according to the instrument of government and other laws of this land.* In recompense they were allowed, without molestation, to discharge their judicial duties and to receive their salaries. On the 4th of April, 1654, on the death of Lord Commissioner Keble, Sir Thomas Widdrington, whose scruples were now quieted, was appointed in his place; and on account of the illness of Lisle, on the 30th of May, by warrant under the hand of the Lord Protector, he was appointed to act as sole Commissioner.†

Whitelock, now styled Sir Bulstrode, having been created by Christina Knight of the order of Amarantha,—that he might resume his place as first Lord Commissioner, made no difficulty in recognising the Protector; and at a grand audience vouchsafed to him at Whitehall, gave "his Highness" an elaborate account of his reception at the Swedish Court by the Queen and the Chancellor Oxenstern, and how he had escaped shipwreck by embarking in one of "his Highness's frigates" in the Baltic.‡

On the 14th of July, Whitelock, Lisle, and Widdrington were sworn in before the Council; when the Lord Protector, after the royal fashion, with great form, delivered the Great Seal to them as Lords Commissioners.§

* Whit. 571, 577.

† Rot. Claus. 1564, p. 22. When Cromwell was installed Protector, he reappointed the Commissioners of the Great Seal with the advice of his council.

‡ See Whitelock's "Journal of his Swedish Embassy"—an amusing book—containing, besides his adventures abroad, some interesting notices of Barebones' parliament.

§ Rot. Cl. No. 62, in Petty Bag Office.

Cromwell's second parliament met on the 3d of September,—a day he considered so auspicious to him. The session was opened with royal splendour, the Protector proceeding to Westminster in a grand state carriage, attended by his life guards, and followed by the Commissioners of the Great Seal and other officers of state and of the household, all in coaches, carrying swords and other emblems of sovereignty with them. In his speech he boasted much of the appointment of Commissioners to consider how the laws could be made plain, short, and easy,—of putting into the seat of justice men of the most known integrity and ability,—and that the Chancery had been reformed to the just satisfaction of all good men.* [SEPT. 3, 1654.]

The Lord Commissioner Whitelock was returned by three constituencies,—the county of Buckingham, the city of Oxford, and the borough of Bedford. He chose to sit for Buckinghamshire, but does not appear to have taken any prominent part in the debates. Other members more adventurous questioned the title of the Lord Protector, and considered whether the government should be in the hands of one individual,—so that, in the month of January, he thought fit, after the manner of the Stuarts, abruptly to dissolve the parliament before it had passed a single act. A bill had been brought in to regulate—not to abolish—the Court of Chancery; but it had not proceeded further than the committee,§ and we are not informed of its contents. [JAN. 22, 1655.]

Cromwell now for a while assumed legislative power to himself with the advice of his council, and, under the name of "Ordinances," issued proclamations which he enforced as law. Among these was "an ordinance for the better limiting the jurisdiction of the High Court of Chancery," which had been framed without the slightest communication with the Lords Commissioners, and displayed such ignorance that it might have been the production of General Harrison. The Lords Commissioners were summoned before the Council, where the ordinance was delivered to them, and "they were gravely admonished to be careful not to oppose his Highness's intentions for the common good." Lisle, who was an exceedingly illiterate person as well as very subservient, promised obedience; but Whitelock and Widdrington saw that many parts of the "ordinance" were quite impracticable, and that they should expose themselves to derision if they attempted to put it in execution. Lenthal, the Master of the Rolls, likewise joined them in a remonstrance against it. They represented that it would deprive many persons of their freehold without offence or legal trial, contrary to the Great Charter and many acts of Parliament, and they presented a memorial on the proposed rules, showing that in many instances they could not be obeyed, and in others the most mischievous consequences would follow from obeying them. Two of the rules, with the objections to them, may serve by way of specimen of this Chancery Reform:—*Rule.* "Every cause shall be heard and determined the same day it is set

* Mem. 600. † Com. Jour. vii. 414.

down, and for this purpose the Lords Commissioners shall sit if necessary in the afternoon as well as the forenoon, except upon Saturdays." *Objection*:—"This is impossible, for Equity causes depend upon so many circumstances in cases of fraud, that ofttimes three or four days are not sufficient for the orderly hearing of one single cause, and the Commissioners cannot sit at the times appropriated to the sittings at the Rolls, as council and solicitors cannot do their duty in two places at the same time."*

Rule.—"No injunction shall be granted to stay the mortgagee from his suit at law, and no injunction shall be granted but upon motion in open court after hearing the merits." *Objection*:—"The mortgagor would often be unjustly turned out of possession, and there is more reason for allowing the interference of a Court of Equity on mortgages than on bonds and other securities, where it is and must be allowed. By the negation to the granting of injunctions in cases of waste, timber might be felled, houses pulled down, meadows and ancient pasture ploughed up, to the irreparable loss of the plaintiffs and the Commonwealth."†

The Lords Commissioners went on for a whole term after the making of the "ordinance," refusing to observe it. Whitelock said, "that he had taken an oath to execute the place of Commissioner of the Great Seal legally and justly, and for him to execute that 'ordinance' as a law, when he knew that those who made it had no legal power to make law, could not be justified in conscience, and would be a betraying of the rights of the people of England."

The day after term they were summoned before the Lord Protector and the Council, and ordered to bring the Great Seal with them,—which they knew was the signal of their dismissal. [JUNE 6, 1665.]

His Highness told them "that every one was to satisfy his own conscience in a matter to be performed by himself, and that he had not a worse opinion of any man for refusing to do that which he was dubious of; but that the affairs of the Commonwealth did require obedience to authority, and that the Great Seal must be put into the hands of others who might be satisfied that it was their duty to perform that command."

Whitelock and Widdrington both tried to justify themselves; but the Protector required them to lay down the Seal, and to withdraw. Having, after the example of the Kings, kept the Seal some days in his own possession and personally directed the sealing of various instruments, without any Lord Chancellor, or Lord Keeper, or Lords Commissioners, he delivered it to a new Lord Commissioner,—Colonel FIENNES, a soldier,—and to the noted Major LISLE, "a man for all assays, who had no other knowledge of the business he undertook beyond the little

* It was not then foreseen that there would be five Courts of Equity sitting together in Westminster Hall.

† I find one regulation, however, more reasonable, "that the Masters in Chancery shall sit in public;" to which the only objection was, "that it was so worded as to take away the power of excepting to their Report."

he had learned by accompanying the late Commissioners." In presence of his Highness and his Council, they took the oaths appointed by his Highness and his Council to be taken."*

"Thus," says Whitelock, "my fortunes and interest decreased; and now my pretended dear friends and frequent visiters withdrew themselves from me, and began neither to own nor to know me: such is the course of dirty worldlings."†

He returned to the bar, and at once got into great practice; but Oliver soon made him and Widdrington Commissioners of the Treasury, with a salary of 1000*l.* a year.

Nathaniel Fiennes, the new Lord Keeper,—placed the first in the commission, I presume, on account of his superior military rank,—was the second son of Viscount Say and Seal. Having left the University, he passed a short time in the Inns of Court, but merely to finish his general education without any view to the profession of the law. He sat for Banbury in the parliament which met in the beginning of 1640, and again in the Long Parliament, and was much in the confidence of Pym and the popular leaders. When hostilities began he had a commission given him, first to be a captain, and afterwards a colonel of horse, under the Earl of Essex, General of the parliamentary forces. Inspiring great confidence by his military ardour, he was made Governor of Bristol; but to the great disappointment and indignation of his whole party, he surrendered that city to Prince Rupert, after a very feeble defence. He was brought to trial before a court-martial for cowardice, and condemned to death;‡ but, by the intercession of his father, he was pardoned, and he afterwards published a justification of his conduct, which very much reinstated him in public opinion. Although not afterwards trusted with any command in the army, he obtained considerable influence in the House of Commons, and was a very active committee-man. He was, for a long time, a violent Presbyterian, and supporter of the Solemn League and Covenant. In consequence, he was expelled from the House by Pride's purge. But he then made a sudden wheel,—struck in with the Independents,—favoured the ascendency of the army, and became a tool of Cromwell. Hence his present promotion to the Bench; and the highest civil office in the state was committed jointly to a Colonel and a Major.

I do not find any particular account of the manner in which Lords Commissioners Fiennes and Lisle discharged their judicial duties, although there were loud complaints of their general incompetency. However, their appointment was sanctioned by Oliver's third parliament,§ and they continued in office till his death. It may be presumed that they continued the practice of calling in the assistance of the

* Cl. R. 1625, p. 8, n. 26.

† Mem. 627. This is but an indifferent specimen of republican manners, and affords a great contrast with our own times, when loss of office does not imply loss of friends.

‡ 4 St. Tr. 186.

§ On the 10th of October, 1656, there came the following message from his High-

Judges; and we must remember that the common-law bench never was better filled, the Protector not only having said that he wished to govern by "red gowns rather than red coats," but having actually appointed Hale and the most distinguished and honourable lawyers in the profession to preside in the Upper Bench, the Common Bench, and the Exchequer. The Equity business in Chancery must have had great assistance from Lenthal, who, released from his duties as Speaker of the House of Commons, continued Master of the Rolls, and was noted for his assiduity and ability as a Judge.

The two Lords Commissioners of the Great Seal were, at all events, very active politicians, and unscrupulously exerted themselves in fulfilling all the wishes of their master. When pressed for money, and trusting to the popularity he thought he had acquired by his successes against Holland and Spain, and the submissive manner in which his alliance was courted by France, he ventured to call another parliament, —Colonel Fiennes and Major Lisle regulated the preliminary proceedings of the Council of State, by which, to secure a majority in spite of the unfavourable result of the elections, nearly one hundred of the members returned were pronounced disqualified and incapable of sitting, under the pretext of "immorality" or "delinquency." On the [SEPT. 17, 1657.] day of meeting, when the members had returned to their own House from the Painted Chamber after the Protector had harangued them, none were allowed to enter without a certificate of being "approved by his Highness's Council;" and loud complaints being made of the exclusions, Lord Commissioner Lisle put them in mind, that their first work was to choose a Speaker, and proposed Sir Thomas Widdrington, Ex-commissioner of the Great Seal (now devoted to Cromwell), as a person of great integrity and experience in relation to parliamentary business, and every way qualified for that service. Widdrington being placed in the chair, a motion was made, that the excluded members be permitted to take their places, as it was for the House to decide upon the qualifications of its members; but here Lord Commissioner Fiennes pointed out that by the "Instrument"

ness, addressed "To Our right trusty and right well beloved Sir Thomas Widdrington, Knight, Speaker of the Parliament:"—

"OLIVER, P.

"Right trusty and well-beloved, We greet you well. It being expressed in the 34th article of the Government that the Chancellor, Keeper, or Commissioners of the Great Seal, shall be chosen by the approbation of parliament, and in the intervals of parliament by the approbation of the major part of the Council, to be after approved by the parliament, and We having before the meeting of the parliament appointed, with the approbation of the Council, Our right trusty and right well beloved Nathaniel Fiennes and John Lisle, Commissioners of the Great Seal of England, I have thought it necessary to transmit to you their names, to the end, that the resolution of parliament may be known concerning their approbation, which I desire may be with such speed as the other public occasions of the Commonwealth will permit, and so I bid you heartily farewell." The required approbation was given forthwith. Serjeant Glynne was approved of the same day as Chief Justice of the Upper Bench, from which it has been erroneously supposed that he was made a Commissioner of the Great Seal.—See *Hardy's Chancellors*, 74.

which now regulated the constitution of the government, the Lords of the Council were to see that no papists or delinquents should be returned to serve in parliament, and asserted that this trust being vested in them, they had discharged it according to the best of their judgment. It could not be denied that such was the provision of the "Instrument;" but that the Council should decide on secret information, and without knowledge of the constituents or representatives, was alleged to be contrary to the first principles of justice. By dint of numbers, a motion was carried, "that the House should pass to the business of the nation."

Under such management, an act was easily carried for excluding Charles Stuart and his family from the Crown, and the House was prepared for the motion, that the title of King should be offered to Cromwell. This motion was to have been made by Ex-commissioner Whitelock; but he quailed when the day for it arrived, and the task devolved on Alderman Pack, one of the representatives for the city of London.* The resolution being carried without difficulty, the two Lords Commissioners of the Great Seal, with Whitelock, Lenthal, Lord Broghill, and others were appointed to communicate it to his Highness, and to solicit his concurrence. The conferences lasted several days, during which, Lords Commissioners Fiennes and Lisle repeatedly addressed his Highness, and, in trying to remove his affected scruples, certainly display more legal acuteness and constitutional learning than could possibly have been expected from their military breeding.†

There was no difficulty in convincing the person to whom their arguments were addressed, as the scheme was his own, and he ardently wished to accomplish it. The negotiation was prolonged in the hope of softening the opposition to it among the officers of the army, who aspired to the office of Protector in their turn,—among the determined republicans, who had sworn never again to submit to hereditary rule,—and among the members of the Protector's own family, several of whom were zealous royalists, and were constantly urging him to restore the ancient family. After long hesitation, his apprehensions of insurrection or assassination prevailed, and we do not find the name of Oliver I. in the list of the Kings of England.

But his answer being merely that "he would not undertake the government *with that title of King*," the parliament remodelled the constitution by "the Petition and Advice" in such a way as might lead to hereditary limited monarchy, under "Protectors;" and if Richard

* Some time before, by way of a *feeler*, Jephson, during a debate in the House of Commons, had thrown out this suggestion in a random manner, and it was not ill received. When Cromwell afterwards asked him in private what could induce him to do so. "As long," said Jephson, "as I have the honour to sit in parliament, I must follow the dictates of my own conscience, whatever offence I may happen to give to your Highness." "Get thee gone," said Cromwell, giving him a friendly slap on the shoulder, "get thee gone for a mad fellow as thou art."

† The most eloquent speaker on this occasion was Lord Broghill, afterwards famous as Earl of Orrery, and he was ably supported by Whitelock and Lenthal. See the speeches at length in the *Life of Whitelock*, pp. 275—295, and an admirable summary of them in Hume, vol. vii. 271.

had possessed any portion of his father's energy, there might have been a change of dynasty, and, with the advantage of the incorporating union which had been forcibly accomplished with Scotland and Ireland, the nation might sooner have reached the freedom, prosperity, and happiness which it has enjoyed under the mild sway of the House of Brunswick. The Protector was now empowered to name his successor, and "to call parliaments consisting of two Houses," which he construed into a right to create Peers. As soon as his grand inauguration was over,* he prorogued parliament, without dissolving it,—that he might have time to model his new House of Lords, which was to be brought into action at he commencement of the following session.

After great deliberation, the Lords Commissioners of the Great Seal were directed to issue writs of summons to the new Lords in the terms of the writ of summons to Peers under the monarchy; and the Judges gave it as their opinion that those who sat under these writs would gain a peerage in fee descendible to their posterity.† At the top of the list of those summoned were the names of the Protector's two sons—the Lord Richard and the Lord Henry Cromwell (as Princes of the Blood), and, next, Lord Fiennes and Lord Lisle, the Lords Commissioners of the Great Seal. Afterwards follow the names of Lord Whitelock, of Lord Morpeth, ancestor of the present Earl of Carlisle, and of Lord Monk (the Restorer). Four or five of the old nobility were summoned, but they refused to attend; and Sir Arthur Hazelrig, and two or three other members of the House of Commons who were included, wisely preferred to continue to sit there.‡

On the day appointed for the re-assembling of parliament, the session [JAN. 20, 1658.] was opened by the Lord Protector with all the forms and all the pomp of the ancient sovereigns. The new Lords met in the old chamber which was ornamented with the tapestry of the Armada. A chair of state was there placed for his Highness, resembling the throne. There were no Bishops, for they had been excluded by Charles; but in their place the Judges, in scarlet and ermine, were seated on the right of the throne. The Lord Protector, in splendid attire, and wearing a hat with a gold band, attended by his

* At this ceremony, Lord Commissioner Whitelock acted a conspicuous part, assisting the Speaker to clothe the Protector in his purple robe, to gird the sword about his Highness, and to deliver into his hand the sceptre of massy gold,—and when the trumpets sounded and the heralds proclaimed him, joining in the shouts of *God save the Lord Protector!!!*—*Whit.* 662.

† The original warrant was "for the Commissioners of the Seal, with the advice of the Judges, to prepare and frame a writ for summoning the members of the other House of parliament to meet at such time and place as shall be appointed by his Highness; and the Commissioners are to seal such writs and to issue them out to such persons as his Highness, under his sign-manual, shall direct and appoint."—*Whit.* 662.

‡ Cromwell likewise created knights and baronets, by what authority I know not, for it is not given by the "Instrument of Government," or the "Petition and Advice." Not being a knight himself, he could not deal according to the ancient usages of chivalry, but he must have had the opinion of his law officers on the subject, for both his Attorney and Solicitor General became baronets.—*Whit. Mem.* 674.

great officers, and surrounded by his Life Guards, having come from Whitehall in a carriage more splendid than Stuart ever sat in, and seated himself under the "cloth of state,"—the Gentleman Usher of the Black Rod was sent to command the immediate attendance of the Commons, in the name of his Highness. They soon appeared at the bar, headed by Widdrington, their Speaker; and the two Lords Commissioners of the Great Seal, with the other great officers standing by his side, his Highness, to the great scandal of true republicans, thus began:—

"My Lords, and Gentlemen of the House of Commons."—After a speech much shorter than his usual tiresome, embarrassed harangues, he said that Lord Commissioner Fiennes would explain more fully the reasons for now calling parliament together; and the Lord Commissioner accordingly delivered a long address to the two Houses, by way of enlargement on that of his Highness.*

But this first attempt at a restoration of the ancient constitution, with modern amendments, proved wholly abortive. Cromwell was greatly weakened in the Commons by transferring so many active supporters to the other House; and there being an article in the "Petition and Advice" that each House should judge of the qualification of its own members, the excluded representatives were all admitted to take their seats, so that there was immediately a decided majority against the Government.

The Peers, however, with Lord Fiennes on the woolsack, having taken the oaths, proceeded to business, and on the second day after their meeting came unanimously to a resolution, "that an humble address be presented to the Lord Protector, praying that his Highness would be pleased to appoint a day of public humiliation throughout the three nations." Two Judges, Wyndham and Hill, were sent down to the Commons to communicate this resolution, and to ask them to concur in the address. The messengers were admitted, and allowed to deliver their message; but when they had withdrawn, a motion being made that they be again called in and informed that this House concurs in the address to his Highness, an amendment was moved, by an opposition member, that "this House will send an answer by messengers of their own;" and, after a sharp debate, the amendment was carried by a majority of 75 to 51. His Highness, greatly enraged at this rebuff, sent for the Commons to Whitehall (without the Lords), and read them a severe lecture on their contumacy; but this only led to a complaint of breach of privilege, and a debate on the appellation and powers of the other House,—with the expression of some doubts as to the validity of the "Petition and Advice," on the ground that it had not been voted by a free parliament.

"Their new Lordships, desirous to try the pulse of the Commons once more,"† sent a message to them in writing, by two of the Judges,

* As every thing was now to be conducted after the antique, I am rather surprised that the Lord Commissioner did not take a text of Scripture for a thesis, like his venerable predecessors.

† 3 Parl. Hist. 1524.

on a subject expected to rouse all their sympathy, "that the Lords desired the Commons to join with them in an address to the Lord Protector, that his Highness would be pleased to issue a proclamation, by the advice of both Houses, commanding all Papists and others who had been in arms against the Commonwealth, to depart out of London and Westminster, and twenty miles thereof, by a certain day." But as soon as the message was delivered, the Commons resolved, without a division, "that they would send an answer by messengers of their own."

The next morning news was brought to Cromwell, at Whitehall, that [Feb. 4, 1658.] they were resuming the debate on "the appellation and powers of the other House;" when, not staying for his state carriage, he threw himself into a hackney-coach standing by, drawn by two shabby horses, and attended only by six of his guards, whom he beckoned to follow him, he proceeded to the House of Lords, and sending the Gentleman Usher of the Black Rod for the Commons, made them an angry speech, concluding with these words:—"I think it high time that an end be put to your sitting, and I do dissolve this parliament, and let God judge between you and me."*

A bill had been introduced into the House of Commons this session "for better regulating and limiting the jurisdiction of the Court of Chancery, but, along with various others, it was lost by the hasty dissolution."†

The Protector was now obliged, on the discovery of a royalist plot, to resort to a very arbitrary measure, by establishing a High Court of Justice, which was to decide on life and death without a jury, and without the control of any known law. The Lords Commissioners of the Great Seal were placed at the head of it, and Lord Lisle acted as President.

I will give a short specimen of the judicial mildness of this protectorial functionary on the trial of Colonel Slingsby, which may soften our resentment against the tyranny of the Stuart Judges:—*Lord Lisle*. "Thou here standest charged for high treason; this Court requires that thou give a positive answer whether guilty or not guilty."—*Slingsby*. "I desire to have counsel assigned me."—*Lord Lisle*. "There is matter of fact laid to your charge which amounts to treason, and there is no counsel allowed in matters of fact."—*Slingsby*. "There is also matter of law, and I desire to be tried by a jury which is according to the law of the land."—*Lord Lisle*. "We are all here your jury as well as your judges; we are the number of two or three juries."—*Slingsby*. "If it be by the law of the land that the trial shall be by a jury, I desire I may have that privilege."—*Lord Lisle*. "Acts of parliament make justice and law: they are both. They think fit to change the custom of trials that have been in former times."—*Slingsby*. "I desire that the act of parliament may be read."—*Lord Lisle*. "You are before your jury and judges. Parliament have great care of the rights of the people, and

* 3 Parl. Hist. 1525.

† Com. Jour. vii. 527, 528.

have appointed this Court; and his Highness hath appointed you to be tried by us. All must submit to my Lord Protector. We sit here by authority of his Highness, by a commission under the Great Seal, and by authority of parliament, and you must submit to our authority." The prisoner was convicted for having acted under a commission from Charles II., and in passing sentence of death, Lord Lisle thus addressed him:—"It grieves my very soul to think that, after so many signal providences wherein God seems to declare himself, as it were, by signs and wonders, that your heart should be still hardened, I may say, more hardened than the very hearts of the Egyptians; for they, at length, did not only see, but confessed, that the Lord fought against them: but you, oh, that you would confess and give glory to God! You cannot choose but see that the Lord fights against you, that the stars in their courses fight against you; and yet you will not see, you will not confess, until destruction overtakes you."*

The frightful common-law sentence for high treason was pronounced, all which his Highness was pleased to remit—*except decapitation.*

Whitelock refused to serve on this High Court; yet he continued in favour with the Protector, who himself had a regard for law and justice, as far as was consistent with the enjoyment of his own authority.† A patent was even signed by him for raising Whitelock to the dignity of a Viscount. This honour was declined by the Lord Commissioner; but under his former writ of summons to the House of Lords, it was considered that his blood was ennobled; he was treated as a Baron, and he was designated Lord Whitelock till the restoration.‡

When the next anniversary of the great victories of Dunbar and of Worcester came round Oliver expired, and it is generally supposed that the day was still auspicious to him; but such had continued to be the success, as well as vigour of his administration, so much was he dreaded by foreign states, and so much was he respected at home, not only for raising the national credit to a pitch unknown since the days of the Plantagenets, but for the desire which he had shown to govern according to law, and to improve our institutions, that, if his life had been prolonged, there seems reason to think he might have overcome all the difficulties which surrounded him, and that, notwithstanding the imbecility of Richard, his sceptre might have been long borne by his posterity.

[SEPT. 3, 1658.]

* 5 St. Tr. 871.

† "The government of Cromwell was to be sure somewhat rigid, but, for a new power, no savage tyranny. The country was nearly as well in his as in those of Charles II., and in some points much better. The laws in general had their course, and were admirably administered."—Burke, *Remarks on Policy of the Allies.*

‡ I only find one other creation by Oliver above the degree of a Baron, "Viscount Howard of Morpeth, July 20, 1657, afterwards created by Charles II., Baron Dacre, Viscount Howard of Morpeth, and Earl of Carlisle, April 30, 1661."

CHAPTER LXXII.

LORDS COMMISSIONERS OF THE GREAT SEAL FROM THE DEATH OF CROMWELL TILL THE RESTORATION.

On the doubtful assertion that Oliver, according to the power conferred upon him by the Petition and Advice, had duly named his eldest son as his successor, Richard was immediately proclaimed Lord Protector, in London and throughout the kingdom,—with all the solemnities practised on the accession of a new Sovereign. [Sept. 3, 1658.] Nay, addresses to him came pouring in from all classes in a manner greatly to lower the value of such supposed tokens of affection, —pledging "lives and fortunes" in his support,—and declaring, "that though the sun had set, no night followed," and that, "though Providence by one sad stroke had taken away the breath from their nostrils, it had given them in return the noblest branch of that renowned stock,— a prince distinguished by the lovely composition of his person, and still more by the eminent qualities of his mind."

The new Protector at first graciously confirmed the Great Seal to the military Lords Commissioners, Lord Fiennes and Lord Lisle; but hearing loud complaints of their incompetency, he soon after, while sitting in Council, desired them to surrender it, and he re-delivered it to them jointly with Lord Whitelock, in whose judicial integrity and ability he and the public entertained the highest confidence.* [Jan. 22, 1659.]

Writs of summons for a new parliament having been issued by the Lords Commissioners under the Great Seal, the session was opened by Richard according to royal forms, except that, having addressed both Houses himself in a very sensible speech, he did not call upon any Keeper of the Great Seal farther to explain the reasons for assembling them. [Jan. 27, 1659.]

The three Commissioners, being all ennobled, took the oaths with the other Peers, Lord Whitelock presiding on the woolsack. But they could never get any farther recognition of their "order" from the Commons than "that this House will transact with *the persons now sitting in the*

* "Dec. 30. I went about the business of the Great Seal, whereof I was now again made a Commissioner. Richard had a particular respect for me, and upon the 22d of this month, by advice of some near to him, without any seeking for it by me, I was sent for to Whitehall, where I met the two Lords Commissioners of the Seal, Fiennes and Lisle, and they together being called to the Council Chamber, the Great Seal was delivered to his Highness sitting in Council, and his Highness presently delivered it to Fiennes, Lisle, and me, as Keepers of the Great Seal of England."—*Whit.* 676. He adds that his appointment was generally attributed to Fiennes, who had found Lisle incompetent.

other House as a House of Parliament for the present, without prejudice to the privilege of such Peers as have been faithful to the parliament, of being duly summoned to be members of that House." The parliament was soon found wholly unmanageable, and a majority of Richard's council advised him to dissolve it, and to trust rather to the combination of military officers now struggling for supreme rule. This step was strongly opposed by Lord Whitelock, who foretold that it would eventually lead to the destruction of the Protectorate; but he was overruled, and a commission was made out for dissolving the parliament, Lord Fiennes being named the head Commissioner. The commission being announced to the Lords, and the Commissioners having taken their seats under the steps of the throne, the Black Rod was ordered to summon the Commons to the bar; but they declared they would receive no communication from the Lords except by members of that House, and adjourned for three days. Lord Fiennes, however, in the absence of the Commons, ordered the commission to be read, and, in the name of his Highness the Lord Protector, dissolved the parliament. [Ap. 18, 1659.] A proclamation under the Great Seal communicated the information to the nation the same afternoon.*

By this dissolution Richard had signed his own deposition. Although he continued to reside at Whitehall, he was deserted by all the world, and the government was in complete abeyance till the council of officers thought fit to restore the Long Parliament, thinking they would have a better chance of power by possessing such an instrument under their control. A majority of the surviving members were Presbyterians and Royalists, but they were still prevented by violence from entering the House, and the "Rump," consisting chiefly of those who had voted for the King's death, did not exceed the number of seventy.

The new House of Lords had vanished like a morning mist, and Whitelock was allowed to take his place in the Commons as member for Buckinghamshire, for which he had been returned in 1640; [May 7, 1659.] but he was much too moderate and too much of a trimmer to be in favour with the ruling faction, and their first step was to deprive him and his colleagues of the custody of the Great Seal. Two days after the Rump re-assembled they agreed to [May 9.] a resolution "that a new Great Seal be with all speed prepared and brought into this House, according to the form of the last Great Seal made by authority of this parliament, and that the last Great Seal be brought into this House to be broken before the parliament."

A new Great Seal being made, an act was passed for appointing Lenthal the sole keeper of it for eight days, and for ordering the old Great Seal to be broken.†

* 3 Parl. Hist. 1544.

† "An act for the Great Seal of England."—"Be it enacted by this present parliament and the authority of the same, that the Seal on the side whereof is engraven the maps of England, Ireland, and the Isles of Jersey, Guernsey, and Man, with the arms of England and Ireland, and this inscription, viz. 'The Great Seal of England, 1651,' and on the other side the sculpture of the parliament sitting, with this inscription, viz. 'In the third year of freedom, by God's blessing restored, 1651,'

The old Seal being brought into the House by Lord Whitelock, was accordingly broken by a smith into several pieces, which were given to the Ex-commissioners for their fees, and the new Seal was put into the hands of Lenthal as "Lord Keeper for the Commonwealth." [MAY 14.] There being great difficulty in the selection of those who were permanently to hold it, another act was passed to continue him some time longer in the office.

In the meanwhile the parliament resolved "that the Court of Chancery be thoroughly reformed and regulated, and that the whole profits, fees, and perquisites arising from the office of Keeper of the Great Seal, should be sequestered and go to the use of the Commonwealth."*

The nomination of the new Commissioners of the Great Seal was referred to "the Council of State," and they recommended Bradshaw, who had presided at the King's trial, with Terryll and Fountain, two lawyers known only for their violent republican principles. There was an objection made to the appointment of such men, but it was carried by a majority of 43 to 15. The Commissioners were introduced into the House, and marching up to the table, with three reverences to the Speaker received the Great Seal from him after he had administered to them the following oath, "You shall swear that you shall be true and faithful to this Commonwealth, as it is declared by parliament, without a single person, Kingship, or House of Peers, and that you shall well and truly execute the office of Commissioners of the Great Seal of England, according to the best of your skill, knowledge, and power."†

They were ordered to pass a Commission under the Great Seal to authorize the Master of the Rolls, with certain Judges and Masters in Chancery, to hear causes after taking the prescribed oath of allegiance to the Commonwealth, and abjuration of Kingship and House of Peers.‡ These three Commissioners remained in possession of the Great Seal for five months, while the "Rump" was permitted to sit, and was ostensibly the supreme power in the State; but I do not find any account of their judicial proceedings.§ In the distracted condition to which the

shall from henceforth be the Great Seal of England, and none other, and shall be and is hereby authorized and established to be of the like force, power, and validity, to all intents and purposes, as any Great Seal of England hath heretofore been or ought to be, and that Wm. Lenthal, Speaker of the parliament, be and he is hereby nominated, constituted, and appointed Keeper of the Great Seal of the Commonwealth of England, to have, hold, exercise, and enjoy the said office to the said Wm. Lenthal, from this 14th day of May, 1659, for the space of eight days from hence next ensuing, and no longer, and that in as full, ample, and beneficial manner to all intents and purposes as any Lord Chancellor of England, Lord Keeper, or Lords Commissioners of the Great Seal may, might, should, or ought to have had, exercised, or enjoyed the same."—*Scobel's Acts.*

* Com. Jour. vii. 670. Whitelock, 680.

† The oath was administered to them "holding up their hands," from which I conjecture that the ceremony of *kissing the book* was then abolished.

‡ Com. Jour. vii. 728.

§ During all this time, Bradshaw had been ill of a quartan ague, of which he died on the 31st of October, "a stout man and learned in his profession: no friend to monarchy."—*Whit.* 686.

nation was reduced, the administration of justice must have been nearly suspended, and the executive government was carried on jointly by the parliament and the council of officers.

The dissensions between these bodies ended in General Lambert, with a body of 3000 guards, intercepting the Speaker in Palace Yard as he was proceeding to take the chair, and forcibly preventing him or any of the members from entering the House of Commons. Thus the Rump was again ignominiously expelled, and [Oct. 13, 1659.] the officers assembled at Wallingford House were for a time the supreme power in the State. That their rule might appear to be in some degree tempered by the presence of a civilian, they issued the following missive to Whitelock, judging from his pliable character that he would not much obstruct their schemes:—

"To our honoured Friend, Bulstrode Lord Whitelock.

"Sir,

"Upon consideration of the present posture of affairs of this Commonwealth, the General Council of Officers of the Army have thought fit to appoint a Committee of Safety for the preservation of the peace and management of the present government thereof; as also for their preparing of a form of a future government for these nations upon the foundation of a Commonwealth or free state: and yourself being one of the persons nominated for that purpose, we do, by their direction, hereby give you notice thereof, and desire you to repair to-morrow morning, at ten of the clock, to the Horse-chamber at Whitehall, in order to the service aforesaid."

Whitelock's character will be best appreciated by allowing him now to speak in his own person:—"I was in some perplexity what to do upon this letter, and had much discourse with my friends about it. Desborough, and some other great officers of the army, and actors in this business, came to me, and made it their earnest request to me to undertake the trust, and told me that some had a design to overthrow magistracy, ministry, and the law, and that, to be a balance to them, I and some others had been chosen to oppose this design, and to support and preserve the laws, magistracy, and ministry in these nations: that if I should deny to undertake the charge, it would much trouble the General Council of Officers, and be of great prejudice to the intended settlement; and therefore they most earnestly desired me to accept of this employment. I had resolved in my mind the present state of affairs; that there was no visible authority or power for government at this time but that of the army; that if some legal authority were not agreed upon and settled, the army would probably take it into their hands, and govern by the sword, or set up some form prejudicial to the rights and privileges of the people, and for the particular advantage and interest of the soldiery, and that to prevent these evils, and to keep things in a better order and form, I might be instrumental in this employment. Upon these and the like grounds, I was persuaded to undertake it, and did

meet with them at the place appointed, where I was received by them with all respect and civility."*

The first act of the new government was to restore the Great Seal to the keeping of the gentleman who had first sent in his adhesion, and the following order was made:—

"At the Committee of Safety, at Whitehall.

"The Committee of Safety, taking into consideration the necessity of disposing of the Great Seal so as the same may be made use of for the public service, and the administration of justice,

"Ordered that the custody of the Great Seal of England be committed to the Lord Whitelock, as Commissioner and Keeper of the said Great Seal until further order. And the same was accordingly delivered to his hands by the Lord President, and ordered that an entry of the delivery of the Great Seal to the said Lord Whitelock as Commissioner and Keeper of the said Great Seal be made in the Close Roll in Chancery.†

"William Robinson,
"Clerk of the Committee of Safety."

It does seem most extraordinary that a lawyer of Whitelock's reputation and abilities could be induced to take his seat among these military chiefs, so notorious for their fanaticism, their violence, and their utter ignorance of the principles on which mankind are to be governed. The present revolution was received with more general disapprobation than any preceding change which had surprised and perplexed the nation since the death of the last King. There was no regret for the "Rump;" but all thinking men were alarmed to find themselves under the capricious and arbitrary rule of military adventurers, without a leader to correct their extravagance or to soften their violence.

For two months did Lord Keeper Whitelock continue with that title in possession of the Great Seal. Apartments were assigned to him in Whitehall, where, he says, "he sealed commissions and heard motions and causes, the counsel and clients coming thither very willingly to attend upon their business."‡

But the public distractions increasing as Monk approached, it soon [Nov. 1659.] became necessary to postpone all judicial business to a quieter time.§

* Mem. 685, 686.

† The entry was made accordingly.—Rot. Cl. 1659, p. 2, n. 39.

‡ Mem. 688.

§ "Wednesday, Nov. 16, 1659.
"At the Committee of Safety at Whitehall.

"This Committee holding it convenient and necessary for divers weighty reasons to adjourn the remaining part of this present Term from and after Saturday, the 19th of this instant Novr.—It is therefore ordered, that the remaining part of the aforesaid present Term upon and from the day aforesaid be adjourned until the first day of the next Term; and to prevent the discontinuance of any process, suits, or causes now depending, or any inconvenience to the people thereby, it is also ordered, that writs of adjournment of the said Term shall be issued and passed the Great

The Council or Committee of Safety, with Whitelock's concurrence, agreed on seven articles as the basis of the future government:—1. That there be no Kingship.—2. No single person as chief Magistrate.—3. That an army be continued.—4. No imposition upon conscience.—5. No House of Peers.—6. The Legislative and Executive powers to be in distinct hands.—7. Parliaments to be elected by the people.

The Lord Keeper actually issued a proclamation for a new parliament, a measure which gave general satisfaction; but the officers immediately became alarmed lest they should be superseded by a national assembly freely elected. They said that though very desirous for a parliament, they must be sure of being able to preserve an ascendency over it, and they insisted that the Lord Keeper in the writs to be issued under the Great Seal, should introduce some very novel and fantastical restrictions on the qualifications both of electors and those to be elected. He represented "that these restrictions were expressly contrary to law and to the oath he had taken as Lord Keeper of the Great Seal, and that he could not, without the breach of his duty, seal writs for a parliament after that manner." Some of the officers saying "that if he would not, they would seal the writs themselves in their own fashion," the Lord Keeper replied "that he was ready to deliver up the Seal to them, and that it was there ready if they pleased to take it from him."

A doughty Colonel, greatly nettled at this speech, exclaimed, "It is not well that at such a time as this so great a charge as the Great Seal should be intrusted to a lawyer. More seemly were it that an office of such power and profit should be given to those who have encountered the wars and adventured their lives for the service of the Commonwealth, than to such as skulk from dangers and covet fees."—*Lord Keeper*. "The gentleman who so much disparages lawyers would do well to call in mind the services performed by Ireton, Jones, Reynolds, and others of the profession during the war. As for myself, I have been exposed to such perils in the service of the state, particularly in my embassy to Sweden, as would have appalled this much-speaking Colonel. I desire, therefore, that such reproachful language may be forborne." Hereupon General Fleetwood and others justified the Lord Keeper and his profession, and the Colonel was put to silence.

[Dec. 22, 1659.]

Through the agency of Whitelock, the Restoration had very nearly at this time been brought about in a manner very different from that which actually happened, and a very different turn might have been given to the subsequent history of the constitution and of the country. Perceiving that men openly contrasted the anarchy and confusion now existing with the tranquillity formerly enjoyed under the monarchy, and were not backward in the expression of their wishes for the restoration of the ancient line of their princes,—despairing of being able to devise any measures effectually to stem the

Seal of England in the usual form for this purpose; and the Lord Keeper Whitelock, Keeper of the Great Seal, is authorized to issue forth writs accordingly."

Whitelock says, "I caused these writs to be framed, sealed, and issued forth in time."—688.

prevailing current of public opinion,—strongly suspecting the intentions of Monk, who was now mysteriously advancing with his army from Scotland,—and eager to anticipate him,—the Lord Keeper formed the project of being the first to declare for Charles, and of carrying over the Great Seal to him at Breda. But this bauble by itself would be of little value; and he disclosed his plan to several others, who advised him to try to obtain the concurrence of Fleetwood, the Major-General of the army, who was of a more moderate and flexible disposition than Lambert, the Commander-in-Chief. Finding the Major-General alone, he said "he was come to discourse with him freely about their present condition, and what was fit to be done in such an exigency as they were brought to; that it was more than evident that it was Monk's design to bring in the King, and that without any terms for those of the parliamentary party; whereby all their lives and fortunes would be at his and their enemies' mercy, they being sufficiently enraged against them, and in great need of repairing their broken fortunes; that all the incensed Lords and secluded members were active in the design, so that the restoration of the King was unavoidable. And, seeing it must be, it was more prudence for Fleetwood and his friends to be the instruments of it than to leave it to Monk; that thereby he might make terms with the King for the preservation of himself and his friends, and, in some measure, of that cause wherein they had been engaged; but that, if it were left to Monk, they and all they had achieved would be exposed to utter ruin."*

Fleetwood was much struck by this reasoning, and agreed to join in any feasible plan that could be proposed for opening a communication with the King. Whitelock proposed that he should muster his troops, take possession of the Tower, induce the Lord Mayor and citizens of London to join with him in calling a free parliament, and send a messenger forthwith to Breda to make terms with the King,—offering himself to go upon that employment, or to accompany him to the Tower. After a little more discourse, Fleetwood became quite delighted with the enterprise; but, dispensing with the Lord Keeper's aid in the military part of it, desired him to get ready forthwith for the journey to Breda, saying, "that he himself would sit down to prepare his instructions, so that he might be on the road that evening or at least early next morning."

But just as the conference was about to finish, it was announced that Vane, Desborough, and Berry desired to see the General, and he desired Whitelock to withdraw and stay a little for him,—which he did with heaviness of heart, knowing the irresolution of his friend. In a quarter of an hour Fleetwood came out, and with much emotion said, "I cannot do it! I cannot do it!" and being asked the reason for this sudden change, he answered, "These gentlemen have put me in mind, and it is very true, that I am engaged to do no such thing without the consent of Lord Lambert." Whitelock urged that Lambert was then

* Mem. 690. Life of Whit. 358.

absent from London, and that the affair admitted no delay, but Fleetwood, repeating that "he could not do it without him," he retired, making this observation, "You will ruin yourself and your friends."*

There can be no doubt that Whitelock, as the accredited agent of Fleetwood, would have been most cordially received by Charles, who was still very doubtful as to the intentions of Monk; and perhaps an arrangement might have been made, providing guarantees for religion and liberty, which would have saved the nation the misgovernment of the two succeeding reigns, and saved the Stuart dynasty.

Several of Whitelock's private friends strongly urged him, for his own sake, to fly with the Great Seal to Breda; but dreading lest, representing no party in the state, he should meet with a repulse, he declined the advice, although he afterwards found that Ingoldsby, who had signed the warrant for the execution of Charles I., by a tender of his service about this time, experienced indemnity and favour.

As a last desperate effort to save the state, he put the Great Seal to writs of summons for the election of a new parliament, but the Lord Mayor and Sheriffs of Middlesex refused to act upon them; no respect was paid to them in any quarter, and, to the astonishment and amusement of mankind, the "Rump" was once more restored. A mob, consisting chiefly of royalists, aided by some soldiers, assembled in Lincoln's Inn Fields, and proceeding to the Rolls, in Chancery Lane, saluted Lenthal as the Speaker of the Long Parliament, not yet legally dissolved, and required that he should go and take his seat in the House of Commons to assist in recalling the King. Fleetwood, after some days spent in weeping, said, "the Lord had spit in his face," fell on his knees before the Speaker, and surrendered his commission. The members, with Lenthal at their head, resumed the possession of the House and of the government. [Dec. 26, 1659.]

This was a very alarming state of affairs for "my Lord Keeper Whitelock," who, if he had not actively assisted in their last expulsion, had immediately assented to it, had accepted a seat in "the Committee of Safety," and acted as their chief legal adviser. He was told of many threatening expressions uttered against him, and that one *Scot*, a person of considerable influence, with whom he had had a private quarrel at an election, had publicly declared, "that the Lord Keeper ought to be hanged, with the Great Seal about his neck."†

He was afraid, therefore, to take his place in the House, as he would have been inclined to do,—his principle being to conform to every political change as quickly as possible. Having been summoned to attend, he went privately to the Speaker, and stated his apprehensions that if he were to appear in his place he might be called in question for his recent conduct, and committed to prison. Lenthal in a friendly manner advised him to attend, saying, that it would be taken as an owning of their authority if he sat with them. He accordingly summoned up resolution to enter the House, but he was very ill received; many of his

* Mem. 691.

† Scot was himself afterwards hanged as a regicide.

most familiar acquaintance looked very cool and reserved, and one or two particular friends, who still stuck by him, gave him a hint not to be present on the day that was appointed to consider of the absent members.

The just result of all his political manœuvring was, that he found himself universally despised, and that he was equally afraid for his personal safety whichever side should triumph. Under these melancholy circumstances his heart entirely failed him, and he resolved at once and for ever to withdraw from public life. He therefore locked the Great Seal in a box, and ordered his wife to carry it to the Speaker, and to deliver him the key of it. He then went privately into the country, and remained in strict concealment at the house of a friend. An order was made that he should attend in his place, but he was not farther molested.* After the Restoration, he at last found himself safe, when the bill of indemnity had passed. From his precaution in declining to act in the High Court of Justice, he was not included in the exception levelled at the King's Judges.

He never again appeared on the political stage,—and here we must take leave of him. It is said that after the Restoration he came to Court and asked pardon of the King for "all that he had transacted against him,"—perhaps not without hope of once more recovering the Great Seal; but Charles bade him "Go live quietly in the country, and take care of his wife and one-and-thirty children."†

He retired to Chilton Park, in the county of Wilts. Here he lived quietly devoting himself to study and country amusements till 1675, when he died in his seventieth year. His remains were interred at Fawley, near Marlow, in Buckinghamshire, where he had constructed a burying-place for his family.

In his own time he was reckoned the competitor of Lord Clarendon for fame as well as for power, and as he was at the head of the law of England for twelve years, and mixed up with some of the most striking events during the most important period in our annals, his merits and defects must continue to be interesting to all who would become familiar with the great lawyers and statesmen of England. His character is not unfairly drawn by Wood:—"He was an observing person through all changes, being guided more by policy than conscience. He was an excellent common lawyer, as well read in books as men, well versed in the oriental languages, and much beloved by Selden and the virtuosi of his time."‡ We must not from the disgust excited by his uniform sub-

* Sir Harry Vane, who obeyed a similar order, was expelled the House, and exiled to his castle of Raby for having taken part with the Council of State on the second expulsion of the Rump.

† This was a considerable exaggeration; for in a "Dedication to the King" of a legal work, the fruit of his retirement, he says that the royal clemency had bestowed upon him his small fortune, liberty, and life, and restored him to "a wife and SIXTEEN children,"—a number exceeded by legal dignitaries of the present day.

‡ Wood's Ath. Ox. Selden's last letter was addressed to him:—

"I am a most humble suitor to your Lordship, that you would be pleased that I

mission to dominant power, forget that he had valuable qualities, and that he not only resisted usurpation as far as he safely could during the struggle, but that he continued to strive to mitigate its evils. In many instances he successfully contended for the extension of clemency towards state offenders, and for protection to oppressed communities. He was ever an advocate of a tolerant and humane administration of the executive authority, and he has a right to a considerable share of the praise justly appropriated to those from whose mild disposition the English revolution in the seventeenth century contrasts so favourably with the French revolution, a centutry and a half later, when knowledge and civilization were supposed to have made such progress in Europe. He ought, above all, to be honoured as a most zealous and enlightened law reformer.

In his character and conduct he has often been compared to Clarendon; but he bears a much closer resemblance to the Lord Keeper who lingered so long in the parliament at Westminster, and then joined the King with the Great Seal at York. Both Whitelock and Littleton were inclined to do good when it was consistent with their interest; both were irresolute and dastardly, and they both acted from time to time with such duplicity as to induce a suspicion that their want of courage was want of principle.

As a contributor to English history, Whitelock does not enjoy the full measure of credit which he deserves. For his "Memorials from the Accession of Charles I. till the Restoration of Charles II.," he justly takes as a motto,

—— "Quæque ipse miserrima vidi,
Et quorum pars magna fui;"

and his work has the unspeakable advantage of having been composed almost from day to day, while there dwelt on his mind a lively and accurate impression of the events which he relates; whereas the more popular "History of the Rebellion," by Clarendon, was written from a faded recollection, and, besides purposed suppressions and misrepresentations, abounds with mistakes of dates and facts unconsciously introduced. The "Memorialist" is uniformly fair and candid; and although the form of a Diary, which he generally adopts, makes it rather a book of reference than for continuous perusal, we find in it passages of reasoning and eloquence, showing that the author was qualified to reach a high degree of literary excellence.

He compiled also "An Abridgment of the History of England down to the end of the reign of James I.;" and besides many speeches, and several forgotten Law treatises which he published in his lifetime, there

might have your presence for a little time to-morrow or next day. This wearies the most weak hand of

"Your Lordship's
"Most humble Servant,
"J. Selden."

Whitelock, though then immersed in public business, went to his dying friend, assisted him in making his will, and consented to become one of his executors.

are, in the British Museum, six MS. volumes compiled by him on the Law of Elections, and other subjects.*

James, his eldest son, was knighted by Oliver, gained distinction as a Colonel in the parliamentary army, and represented the county of Oxford in parliament. William, his second son, rose to great eminence at the bar, and was knighted by Charles II. I do not find any thing more respecting his descendants.

And now I must proceed to relate the last days of the Great Seal of the parliament. [Jan. 13, 1660.] Lady Whitelock having carried it to Lenthal, according to the instructions she had received, he presented it to the House, who immediately made an order "that it be delivered to the Speaker, as Keeper, and remain in his custody till the House should further order."†

A committee was named to consider of fit persons to be intrusted with the custody of the Great Seal. [Jan. 19, 1660.] They made a report in favour of Sir Thomas Widdrington and Serjeants Terryll and Fountain, who were appointed accordingly; and the Great Seal was delivered to them, with much solemnity, by the Speaker, in the name of the parliament.‡

The royal cause having made such progress in public opinion, we may wonder that men were not selected whose principles were more favourable to it; but we must remember that the excluded members had not yet been re-admitted; that a great majority of the members now sitting were republicans in their hearts; that Monk yet found it convenient to dissemble; and that it was not till some time afterwards that any one ventured openly to propose the King's recall.§

No judicial business was done in Hilary or Easter terms, and the functions of the new Lords Commissioners of the Great Seal were chiefly ministerial,—the parliament having ordered "that the Speaker, in execution of their votes, should sign a doquet for patents and other instruments to pass the Great Seal, and that the Lords Commissioners do pass such patents and instruments under the Great Seal accordingly."‖

In obedience to an order they received, they sealed a commission

* Ayscough's Cat. 4749—4754.

† Mem. 693. At the same time Lady Whitelock, from apprehension for her husband's safety, burnt many of his papers, which he considered a great loss to the history of those times.

‡ It would appear that they had considerably altered their tone, and were now professed royalists. Fountain was obnoxious to some as a great law reformer.—*Ludlow*, 343. At the same time it was ordained that Newdigate should be Chief Justice, Hill and Nicholas, Judges of the Upper Bench, St. John, Chief Justice, Wyndham and Archer, Judges of the Common Pleas, Wilde, Chief Baron, Thorpe and Parker, Barons of the Exchequer—who had all been republicans.—*Mem.* 693.

§ Even after the re-admission of the excluded members, although there was a majority for royalty, a resolution was passed that the Westminster Confession of Faith, framed by the Presbyterian divines, should be the basis of the national religion; and Baxter acted as chaplain to the House of Commons down to the King's return, when he was made a royal chaplain.

‖ Com. Jour. vii. 814.

authorizing the Master of the Rolls and certain Judges to hear causes in Chancery; but the administration of justice in all the Courts was suspended till Trinity term following, when the King was again on the throne.

It was only on the 13th of March that the resolution passed doing away with the declaration hitherto required from all members and public functionaries, to "be faithful to the Commonwealth as now established, without a King or House of Lords."

Three days after, the act passed for dissolving the Long Parliament, which, passing by the sole authority of the Commons, the more scrupulous pronounced a nullity, for want of the assent of the King and the Lords; and, in strict theory, there is certainly great difficulty in saying when the existence of this famous legislature, which had continued twenty years, legally terminated, the Convention that ratified its dissolution being itself illegal, and incapable of giving itself authority by its own act. [MAR. 16.]

However, the Lords Commissioners Widdrington, Terryll, and Fountain, immediately issued, under the Great Seal, a proclamation and writs, in name of "the Keepers of the Liberties of England," for a new election of representatives of the people, to meet on the 25th of April,—not sending any summonses to Peers, nor taking any measures for having a House of Lords.

On the day appointed both Houses met, without the appearance of royalty, and the Lords without even the form of a summons. None of Cromwell's Peers claimed to sit in the Upper House, and it was in the first instance composed of the Presbyterian Lords who sat there in the year 1648. They re-elected their old Speaker, the Earl of Manchester, who had long been a moderate royalist, but was still very hostile to Episcopacy as well as arbitrary government. In a few days the old cavalier Peers joined, asserting their right as *conciliarii nati*, and they formed a great majority, although, to avoid cavil, the Peers who sat in the King's parliament at Oxford, as well as those whose patents bore date after the commencement of the civil war, abstained for the present from demanding admission. All concurred in continuing the Earl of Manchester as Speaker, out of respect to his personal character and his great parliamentary experience. [AP. 25, 1660.]

The Lords, with a view to their authority and independence, were very uneasy at the thought of the Great Seal being still held exclusively under a vote of the House of Commons by the Commissioners Widdrington, Terryll, and Fountain; and their first act was to appoint their Speaker, the Earl of Manchester, a joint Keeper. Messengers were sent down to the Commons, who (to the great horror of some old republicans returned to the Convention) were admitted, and said, "Mr. Speaker, we are commanded by the Lords to wait upon you with a vote of the Lords, whereby they have nominated and appointed the Earl of Manchester to [APRIL 27.] [MAY 1.]

be one of the Commissioners for the Great Seal of England, and their desire is that the House of Commons will concur with them therein."

After several days taken for deliberation, a resolution was passed [May 5.] "that this house doth agree with the Lords that the Earl of Manchester, Speaker of the House of Peers, be, and he is hereby nominated and appointed, one of the Commissioners of the Great Seal, and added to those who have the present custody thereof till further order." The King's letter by Sir John Grenville had been received, and it was resolved that all proceedings under the Great Seal should henceforth run in the King's name; but a dread perplexity arose from the consideration that the Great Seal now in use, instead of having upon it the name of Charles II., with his titles "of Great Britain, France, and Ireland, King, Defender of the Faith, &c.," represented the House of Commons with the Speaker in the chair, and bore the inscription, "The Great Seal of England, 1651, in the third year of freedom, by God's blessing restored." A select committee being appointed to consider this knotty affair, submitted to the House "whether for the carrying on and present expediting of the justice of the kingdom, the House shall think fit that the Great Seal now in the possession of the Earl of Manchester and the other Commissioners be made use of until further order?" The House agreed in this recommendation, and sent a message to pray the concurrence of the Lords. But their Lordships were very much shocked by the notion of the authoritative use of the republican Seal, and, by way of a gentle refusal, said "they would return an answer by messengers of their own." No answer coming down, the Commons asked and obtained a conference on the subject, when they urged that there were many inconveniences the kingdom suffered for want of the use of the Great Seal,—that the administration of justice was suspended, and all writs, fines, and assurances were stopped,—that three terms had been lost already, and there was danger of having no assizes,—that orders for the collection of the revenue were not obeyed, and for want of pay the army would be obliged to live at free quarters,—that while the Great Seal was not used, the House of Commons could not fill up their numbers,—that preparations could not be made for the King's reception, and this punctilious regard for his image might be fatal to his authority,—that the representations and inscriptions on Seals were immaterial as to their efficacy,—and that in former times Great Seals had been used without the name or insignia of the reigning sovereign, as King James used for some time the Seal of Queen Elizabeth, and Charles I. that of King James.

Still the Lords would not come to a formal vote of concurrence, but they connived at the use of the republican seal till Charles had actually set foot on English ground, and, amidst the enthusiastic plaudits of his subjects, was on his journey from Dover to London to mount the throne.

Being then accompanied by Sir Edward Hyde, whom he had constituted his Chancellor while in exile, and to whom he had delivered a Great Seal which he had caused to be made, bearing his name, style,

and arms,—the Commonwealth Great Seal was no more wanted, and it was dealt with as the royal Great Seal had been in the year 1646, after the surrender of Oxford. On the 28th of May the Commons resolved "that the Great Seal in the custody of Sir Thomas Widdrington and the rest of the late Commissioners of the Great Seal be brought into this House this forenoon, to be here defaced."

Accordingly it was forthwith delivered to Sir Harbottle Grimston, the Speaker. "Being laid upon the clerk's table, a smith was sent for, who broke it in pieces while the House was sitting," and the pieces were delivered to the Lords Commissioners for their fees.* This was the final end of the Great Seal of the Commonwealth,—which the King himself, in the treaty at Newport, had agreed to acknowledge,—and under which justice had long been administered,—commissions had been granted to victorious generals and admirals,—and treaties, dictated by England, had been entered into with the most powerful nations in Europe. [May 28, 1660.]

The following day the two Houses of Parliament threw themselves on their knees before the King at Whitehall, and Lord Chancellor Hyde was seen carrying the true Great Seal before him, in its red velvet purse adorned with a representation of a royal crown and all the heraldic bearings of an English monarch. [May 29, 1660.]

I must now take a short review of the changes in the frame of the law, and the administration of justice, during the Commonwealth and the Protectorate. There were then very wild notions afloat respecting law reform. A party was for utterly abolishing the whole of the common and statute law of England, and substituting the Mosaic law in its place. A very strong prejudice existed against lawyers, who were quaintly denounced as "a purse-milking generation," and were accused of always "bleeding their clients in the *purse vein*." Cromwell himself was by no means above such absurd and vulgar notions, and was more inclined, on those subjects, to listen to such a fanatical buffoon as Hugh Peters than to eminent jurists like Whitelock or Hale. It is because his preposterous schemes for simple and cheap law were properly opposed as impracticable and mischievous, that he complained so bitterly of being worsted by "the sons of Zeruiah." He would not, like Napoleon in a subsequent age, be contented with the glory to be gained by collecting, systematising, and improving existing laws;—of framing a code adapted to the circumstances and habits of a civilized nation;—but he thought that the controverted rights of property were to be decided by an English Judge in Westminster Hall like disputes in an Eastern bazar by the Kadi. "We cannot mention the reform of the law," said he, "but the lawyers presently cry out, *You design to destroy property;* whereas the law, as it is now constituted, serves only to maintain the lawyers, and to encourage the rich to oppress the poor.

* Com. Journ.

Coke, late solicitor for the people of England at the trial of Charles Stuart, when I sent him, with full powers, as Chief Justice to Ireland, determined more causes in a week than all Westminster Hall in a year. The English people will take Ireland for a precedent, and when they see at how easy and cheap a rate property is there preserved, they will never permit themselves to be so cheated and abused as now they are."*

But notwithstanding these crude notions, there were men in England in the middle of the seventeenth century as liberal, zealous, and enlightened friends of law reform, as Romilly, Mackintosh, and Brougham in the beginning of the nineteenth,—men who were for adapting ancient laws and institutions to the altered circumstances of society,—who were fully competent to the important task they had undertaken,—and who, if they had been properly appreciated and supported, would have conferred unspeakable benefits on the country, anticipating and going beyond most of the salutary amendments which have been adopted in the reigns of William IV. and Queen Victoria.

They began their labours, as we have seen,† before the dissolution of the Long Parliament.‡ Their efforts were greatly obstructed, not only by the violent end of the Long Parliament, but still more by the folly and fanaticism of Barebones' Parliament, and by the abrupt dissolution of the two parliaments which followed; but they procured the actual enactment of some most important laws, and the *projects* of many others which have at last been adopted in the present age. Ordinances passed "for changing tenure in chivalry to common soccage," by which

* Ludlow's Memoirs, 123. Even General Ludlow himself, though freer from prejudice, and with a more cultivated mind than any other officer in the service of the parliament,—from keeping bad company had imbibed these notions. "In the mean time," says he, "the reformation of the law went on but slowly, it being the interest of the lawyers to preserve the lives, liberties, and estates of the whole nation in their own hands." So that upon the debate of "registering deeds in each county, for want of which within a certain time after the sale, such sales shall be void, and being so registered, that land should not be subject to any incumbrance;" this word "incumbrance" was so managed by the lawyers that it took up three months' time before it could be ascertained by the committee."—*Ludlow*, 165. I make no doubt that very properly there was much deliberation on such a difficult subject; but all the liberal, enlightened, and influential lawyers, then as now, were much before the majority of the legislature in disinterestedly recommending practicable and beneficial legal reform; and this very Committee, so jeered at, strongly recommended a registry of deeds, which, being still withheld, I several times, while I was a representative of the people, in vain strove to induce the House of Commons to adopt.

† Ante, p. 68.

‡ The chief credit of these reforms is undoubtedly to be ascribed to Sir Matthew Hale, placed at the head of the non-parliamentary committee. I do not find that the name of Coke, the eminent lawyer, who acted as solicitor for the people of England on the trial of Charles I., in the list of either committee, or that he publicly took any part of these proceedings; but when he came to the scaffold, he took credit for having earnestly supported them, and "declared that he had used the utmost of his endeavours that the practice of the law might be regulated, and that the public justice might be administered with as much expedition and as little expense as possible."—*Ludlow*, 368. According to his practice, when he went Chief Justice to Ireland, he seems to have had notions of jurisprudence quite unsuited to a nation that has reached wealth and civility.

a great portion of the land of the kingdom was freed from wardship, reliefs, and other oppressive burdens;—"for abolishing purveyance," a perpetual grievance to all classes of society;—"for allowing marriage to be entered into according to the religious persuasion of the parties, or as a civil contract at their option," the model of the recent marriage act;—"for the registration of births, marriages, and deaths," which we have likewise copied; "for paying Judges and other officers by salaries instead of fees," the most effectual mode of preventing corruption and correcting abuses in courts of justice;—and "for having all legal records in the language of the country,"—so that a knowledge of the laws might be communicated to those who were to obey them.*

I must likewise point out the parliamentary reform introduced by "the Instrument of Government,"—under which the rotten boroughs were disfranchised, and the counties and great towns in England, Scotland, and Ireland chose representatives according to population and property,—the qualification of the electors being well framed to secure independent constituencies,—which Clarendon is obliged to confess "was generally looked upon as an alteration fit to be more warrantably made and in better times."† Most of these improvements were lost for many years by the Restoration, except the abolition of the military tenures, which the country gentlemen would not again submit to, and ingeniously contrived to barter against an excise duty to be paid by the whole community, instead of a land tax to be paid by themselves. I have now to mention other "Ordinances," not passed, but of which draughts are extant:—"For taking away exorbitant fees on original writs, declarations, and other law proceedings,"—"for abolishing fines and common recoveries,"—"for ascertaining arbitrary fines on descent and alienation of copyholds,"—"for the more easy recovery of small debts,"—"for the preventing of fraudulent contracts and conveyances,"—"for making debts assignable,"—and "for establishing a register for all deeds affecting

* The proposition for conducting all law proceedings in English was most strenuously opposed, and seemed to many a more dangerous innovation than the abolition of the House of Lords or the regal office. Whitelock, in introducing it, was obliged to fortify himself with the example of Moses, and a host of other legislators, who had expounded their laws in the vernacular tongue. The reporters, who delighted in the Norman French, were particularly obstreperous. "I have made these reports speak English," says Styles, in his preface, "not that I believe they will be thereby more generally useful, for I have been always and yet am of opinion, that that part of the common law which is in English, hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority, and to stop the mouths of such of this English age, who, though they be confessedly different in their minds and judgments, as the builders of Babel were in their language, yet do think it vain, if not impious, to speak or understand more than their own mother tongue." So Bulstrode, in the preface to the second part of his Reports, says, "that he had many years since perfected the work in French, in which language he had desired it might have seen the light, being most proper for it, and most convenient for the professors of the law." But the Restoration brought back Norman-French to the reports, and barbarous Latin to the law records, which continued till the reign of George II.

† Instrument of Government, Art. xi. xix. xxiv. Hist. Reb. B. xiv. See some admirable reasoning on this subject. *Ludlow*, 166.

real property." Almost the whole of the other Commonwealth law reforms have been gradually introduced into our system; but this last measure, the greatest and most beneficial of all, still remains to confer glory upon the honest and vigorous administration that shall carry it through, notwithstanding the interested clamours of country attorneys, and the foolish fears of country squires.

The common-law bench was exceedingly well filled during the Commonwealth and Protectorate, and the law was well administered through them, except when Cromwell was occasionally driven to supersede them by his Major Generals and his High Courts of Justice. From the embarrassments produced by the political functions of the Keepers of the Great Seal, "Equity" was by no means so well administered, although they worked hard,—sometimes sitting from five in the morning till five in the afternoon. Yet one common cry of reproach pursued their labours. In a petition presented to parliament for regulating the Court of Chancery, the prevailing opinion is thus expressed, "as long as the bar is more able than the bench, *as of late it hath been*, the business of the Court can never be well despatched."

"The Chancery," says a contemporary pamphlet, "is a great grievance, one of the greatest in the nation. It is confidently affirmed by knowing gentlemen of worth, that there are depending in that Court 23,000 causes; that some of them have been depending five, some ten, some twenty, some thirty years and more; there have been spent in causes many hundreds, nay thousands of pounds, to the undoing of many families; what is ordered one day is contradicted the next, so as in some causes there have been 500 orders."

Lay Peers, like Manchester, Kent, and Grey, must have made but a bad figure in giving their opinions on nice questions of conveyancing, or the common practice of the Court. Whitelock, sitting by himself, would have proved a good Equity Judge, but he was thwarted and embarrassed by his colleagues. "The burthen of the business," says he, "lay heavy on me, being ancient [senior] in commission, and my brother Keble of little experience, and my brother Lisle less, but very opinionative. The [A. D. 1652.] business of the Chancery was full of trouble this Michaelmas term, and no man's cause came to a determination, how just soever, without the clamour of the party against whom judgment was given; they being stark blind in their own causes, and resolved not to be convinced by reason or law."* When Whitelock had resigned, Lisle, who was grossly ignorant of his profession, "bore himself very highly and superciliously." The chief weight of the Equity business lay on the shoulders of Lenthal, the Master of the Rolls; but his time was much occupied with politics till after the dissolution of the Long Parliament, and he lost character greatly in the year 1654,—when, after boasting that "he would sooner suffer himself to be hanged over the Rolls gate than submit to Cromwell's absurd and illegal ordinance to regulate the Chancery," and seeing two Lords Commissioners

* Mem. 548.

dismissed for denying its validity,—he agreed to acknowledge it, sooner than lose his place,*—and he made himself the laughing stock of the bar, by trying, along with Fiennes and Lisle, to put a reasonable construction upon nonsense.

He farther lowered himself by his childish anxiety to get one of Cromwell's peerages. The House of Lords being to be restored, it was then thought that, being an attendant on that House as Master of the Rolls, he could not sit in the House of Commons, and "he complained that he, who had been for some years the first man of the nation, was now denied to be a member of either House of Parliament." This complaint coming to the ears of Cromwell, he sent him a writ—which so elevated the poor man, that riding in his coach through the Strand and meeting a friend of Sir Arthur Hazelrigge, who had received a similar writ, and was disposed to treat it with contempt, he said with great earnestness, "I pray write to him and desire him by no means to omit taking his place in the House of Lords, and assure him from me that all that do so shall themselves and their heirs be for ever Peers of England."† The Lords Commissioners, while they resisted the preposterous plans of Cromwell and his officers for reforming the Court of Chancery, from time to time issued very sensible orders for remedying abuses, and under their auspices an ordinance was passed in 1654, abolishing the sixty clerks, introducing many excellent regulations for the conducting of suits, and enacting a table of fees to be received by the Master of the Rolls, the Masters in Chancery, the counsel,‡ and the solicitors.

Although no such monument of juridical improvement as the "Code Napoleon" was transmitted to us by the English Commonwealth, we ought to be grateful to the enlightened men who then flourished, for they accomplished much, and a comparison between them and the leaders of the French revolution would turn out greatly to the advantage of our countrymen, who not only showed a much greater regard for justice, humanity, and religion, but a sounder knowledge of the principles of government,—not changing merely for the sake of change, but only where they thought they could improve. The French copied the most exceptionable measures of the English Revolution—such as the execution of the King, the commencement of a new era from "the first year of liberty," and the appointment of "a

* "Lenthal, who seemed most earnest against the execution of this ordinance, and protested *that he would be hanged at the Rolls gate before he would execute it*, yet now, when he saw Widdrington and me put out of our places for refusing to do it, he wheeled about, and was as forward as any to act in the execution of it, and thereby restored himself to favour."—*Whit. Mem.* 627.

† Lud. Mem. 227. "When Cromwell had dissolved this parliament, he assured his Lords, that notwithstanding the practices that had been used against them, they should continue to be Lords."—*Ib.* 228.

‡ The fee to a barrister with a stuff gown on the hearing of a cause was only 1*l.*, and to a Lord Protector's counsel or serjeant-at-law, 2*l.*—*Ordinance*, anno 1654, c. 44. *Scobell's Acts*, p. 324. See also, 1654, c. 25; 1656, c. 10. *Whit. Mem.* 421, 562, 608, 621, 622.

Committee of Public Safety," which disposed in an arbitrary manner of the lives and fortunes of the citizens. But they wholly neglected the wise lesson set before them to preserve what is good—to amend what is defective—to adapt ancient institutions to altered times—and to show some respect for the habits, the feelings, and the prejudices of the people to be governed. It is difficult for us to separate the men who suggested and supported the wise civil measures of the Commonwealth parliaments from the excesses and absurdities of the Puritans; and the Cavalier party having gained a complete victory over them, we take our impressions of them from their enemies; but I believe that many of them were of the same principles, and actuated by the same spirit, as Lord Somers and the authors of the Revolution of 1688,—whom we are all taught to admire and venerate. If the Restoration had not been conducted with so much precipitation, if the proposition of the virtuous Lord Hale had been acceded to, "that before recalling Charles II., they should consider what reasonable restrictions on the abuse of prerogative the late King had consented to, and what good laws had been passed in his absence as the basis of a happy settlement," the nation might have escaped much of the misgovernment, dissolution of manners, and political convulsions, which marked the history of England during the remainder of this century, and we should have been taught habitually to do honour to the memory of those by whose wisdom and patriotism such blessings had been achieved.

CHAPTER LXXIII.

LIFE OF LORD KEEPER HERBERT.

I SHOULD now naturally proceed to the Life of the Earl of Clarendon, who executed the duties of Chancellor in England upon the Restoration; but as Sir EDWARD HERBERT actually held the Great Seal for a considerable time, with the title of Lord Keeper, although *in partibus* only, and as his name is always introduced into the list of Lord Chancellors and Lord Keepers, some account of him may be expected in this work. He acted a prominent part in one of the most memorable passages of English History.

On the execution of Charles I., the Prince, being in Holland, took [FEB. 1649.] upon himself the royal title, and had a Great Seal engraved; but he did not deliver it to any one, although he immediately swore in some of his fellow-exiles Privy Councillors. [A.D. 1650.] He carried this Seal with him into Scotland when he was crowned King there, having subscribed the "Covenant," and he still kept it in his own custody when he advanced at the head

of the Scottish army into England. After the fatal battle of Worcester, this Great Seal was lost. [Sept. 3, 1651.] It would rather have been an incumbrance to Charles in the royal oak, and in his marvellous adventures with the Penderells, the Mortons, and the Lanes. It was probably thrown into the Severn, that it might not be sent to the parliament as a trophy of Cromwell's victory.

When Charles was again in safety under the protection of the King of France, he caused another Great Seal of England to be engraved in Paris, chiefly as a bauble to be kept by [A.D. 1652.] himself, till, upon a fortunate turn in his affairs, it might be handed over to a Lord Chancellor or Lord Keeper, to be used for actual business within his recovered realm. But it became an object of ambition and contention among his courtiers, who amused the tedium of their banishment by intrigues for the titles of offices of state and offices of the royal household, although no power or profit for the present belonged to them.

Charles himself favoured the pretensions of Hyde to the Great Seal; but this minister was most particularly obnoxious to the Queen Dowager, Henrietta Maria, on whom her son chiefly depended for a subsistence; and out of spite to the man she hated, she warmly supported the cause of his rival, Sir Edward Herbert, about whom she was indifferent. Her importunity succeeded: [April, 1653.] the Great Seal was delivered by the King, with all due solemnity, to her candidate, as Lord Keeper: he took the oaths of allegiance and supremacy, and the oath of office, before a meeting of the pretended Privy Council; and from thenceforward, on all occasions of mock state, when the King of England was supposed to be attended by his high functionaries,—he strutted about bearing the purse with the Great Seal in his hand,—and he was addressed as "Lord Keeper Herbert."

This gentleman, whose professional honours brought him so little comfort or advantage, was nobly descended, being the son of Charles Herbert, of Aston, in the county of Montgomery, of the family of Lord Herbert of Cherbury. After leaving the University, he was entered of Lincoln's Inn, that he might be qualified for the profession of the law. He applied himself very diligently to his studies, and on being called to the bar,—from his connexions and his own industry he rose into good practice, without gaining any great distinction. In the famous masque given by the Inns of Court to the Queen in 1633, he was one of the managers for Lincoln's Inn, and assisted Mr. Attorney-General Noy in exposing to ridicule the projectors who, about this time, anticipated some of the discoveries of the philosophers of Laputa.

He likewise assisted him and Banks, his successor, in the scheme for taxing the people without authority of parliament, under the name of "ship money,"—an invention as new and impracticable as many of those which were ridiculed. He actually abetted all the measures of the Court, and was one of those who hoped that parliament would never more meet in England. Their wish would very likely have been fulfilled, had it not been for the Scottish insurrection, caused by the

attempt to force Episcopacy upon that nation; but money to pay the army being indispensable, and a parliament being called,—to be dismissed as soon as a supply was granted,—he was returned by family interest a member of the House of Commons, and testified his determination to defend every abuse which had been practised during the preceding eleven years. For this earnest of his services he was made Solicitor General on the promotion in the law which took place in [JAN. 25, 1640.] consequence of the death of Lord Keeper Coventry. Clarendon, who always mentions him ill-naturedly, says that he was remarkable in the House "for pride and peevishness;" that "his parts were most prevalent in puzzling and perplexing;"—accuses him of speaking very indiscreetly on the question of the subsidy, whereby it was lost;—and imputes to him the fatal advice by which the King was induced suddenly to dissolve the parliament, because "he found he was like to be of less authority there than he looked to be."*

When the Long Parliament met in the end of the same year, Herbert [NOV. 3, 1640.] was exposed to the pelting of a most pitiless storm, for he was posted in the House of Commons to defend the Government, and the task of excusing or palliating ship money, and the monopolies, and the cruel sentences of the Star Chamber and High Commission, fell exclusively upon him; for Mr. Attorney-General Banks, who was much more implicated in these grievances, was quietly reposing on the Judges' woolsack in the House of Lords,—availing himself of the old opinion that the Attorney-General, being summoned as an attendant of the Peers, could not sit as a Member of the House of Commons. Awed and terrified by the proceedings taken against Strafford, Finch, and other ministers, Herbert apprehended that he might himself be impeached. Under these circumstances, without venturing boldly to meet Hampden and the other parliamentary leaders, he tried by private applications to them to soften them towards him, but with little effect, and he repented that he had ever taken office.

"Longing infinitely to be out of that fire," he was snatched from it at a moment when he least expected relief.† Lord Keeper Finch having [JAN. 29, 1641.] fled the country, and Littleton, the Chief Justice of the Common Pleas, having succeeded him, Banks was made Chief Justice, and Herbert Attorney-General. With infinite satisfaction he vacated his seat in the House of Commons, and, in obedience to his writ of summons, took his place on the woolsack in the House of Lords at the back of the Judges.

His joy must have been a little abated by having soon for his colleague the famous republican lawyer, Oliver St. John, who, agreeing at this juncture with two or three of his party to take office in the momentary prospect of an accommodation, became Solicitor General.‡ It is impossible that there could have been any cordiality between them, for St. John, though continuing down to the King's death to be called

* Hist. Reb. book ii. † Clarendon, Hist. Reb. book iii. ‡ Hist. Reb. b. iii.

"Mr. Solicitor," soon ceased to have any intercourse with the Government, still pressed on the impeachments with unmitigated rigour, and was in reality the chief legal adviser of those who were preparing for civil war.

Herbert, as Attorney-General, passed a year in anxious inactivity, during which Strafford was attainted and executed, and a revolution was making rapid progress, which he deeply deplored, but was unable to oppose. As assistant to the Lords, he remained during this time in the place assigned him in the House, a silent witness of the proceedings against his colleagues,—of the passing of the acts to abolish the Star Chamber and High Commission,—and of the debates upon the bills for excluding the Bishops from parliament, and for transferring to the two Houses the power over the militia.

At last he was suddenly called into action by the King sending for him to Whitehall,—personally delivering to him articles of impeachment ready ingrossed on parchment, [JAN. 3, 1642.] which charged Lord Kimbolton and the five principal popular leaders in the House of Commons with high treason,—and commanding him to proceed instantly to the House of Lords, that he might there exhibit the articles and take the necessary steps for having the accused persons committed to prison, and brought to condign punishment. If there be any faith to be given either to the King or the Attorney-General, the latter had not before been in the slightest degree privy to this illegal and insane scheme. It appears to us that Herbert should have strenuously, though respectfully, resisted it, and pointing out how it violated the law, and the fatal consequences which it must necessarily produce, have resigned his office into the King's hands rather than have assisted in carrying it on.* But we must judge him by the notions of right and wrong prevailing in his own age,—and Lord Clarendon, a constitutional lawyer of great candour, who not unfrequently censures violations of law to extend the prerogative, seems to have thought that the Attorney-General was as little at liberty to disobey or question the instructions he then received,—as if he had been an officer in the field of battle ordered by his General to open a fire upon the enemy. Herbert readily and promptly obeyed, and from that hour civil war became inevitable. "The court was reduced to a lower condition and to more disesteem and neglect than ever it had undergone. All that had formerly been said of plots and conspiracies against the parliament, which had before been laughed at, was now thought true and real, and all their fears and jealousies looked upon as the effects of their great wisdom and foresight."†

In the Life of Lord Keeper Littleton, who was more deeply implicated in this transaction, I have described the manner in which the charge was brought forward in the House of Lords, and the proceedings

* —As my most honoured friend Sir Charles Wetherell, in 1829, nobly resigned the same office when required to prepare the Roman Catholic Relief Bill, which he conscientiously disapproved of.

† Hist. Reb. b. iv.

to which it directly gave rise.* I have now to relate how it recoiled upon the Attorney-General himself.

The House of Commons, having insured the safety of the five members, forthwith began to act upon the offensive, and required the Attorney-General publicly to answer interrogatories: "Whether he did contrive, frame, or advise the articles of impeachment? Whether he knew the truth of them upon his own knowledge, or by information? Whether he would undertake to make them good when he should be thereunto called? From whom he received them, and by whose direction or advice he did exhibit them?" And having received his answer, "that he had neither framed nor advised them, nor knew any thing of the truth of them, nor could undertake to justify them, but that he had received them from the King, and was by him commanded to exhibit them;" they resolved "that he had broken the privilege of parliament in preferring those articles, and that a charge should be sent to the Lords in the name of the House of Commons against him, to have satisfaction for the great scandal and injury to the members thereof."†

Accordingly, on the very day the royal assent was given to the Act for excluding the Bishops from parliament, an impeachment was brought up against the Attorney-General, and the articles being read to him while he stood up in his place, he required a copy of them. Eight days were given to him to put in his answer; and being required to give bail for his appearance, the Earl of Monmouth became surety for him to the amount of 5000*l.*‡

[FEB. 14, 1642.]

In his formal plea, he repeated the facts he had before stated,—concluding with the observation that "he did not conceive there could be any offence in what was done by him in obedience to his Majesty's commands."

The King then very irregularly sent a letter to the Lord Keeper to be read in the House, in which, after reciting the articles of impeachment, which he had with his own hand delivered to the Attorney-General, he thus proceeds: "We farther declare that our said Attorney did not advise or contrive the said articles, nor had any thing to do with or in advising any breach of privilege that followed; and for what he did in obedience to our commands we conceive he was bound by his oath, and the duty of his place, and by the trust by us reposed in him so to do; and had he refused to obey us therein, we would have questioned him for the breach of his oath, duty, and trust."

[MARCH 8, 1642.]

But the Lords were highly incensed by this letter, considering it "a prelimiting of their judgment:" and, having communicated it to the House of Commons, intimated that they were ready to proceed with the trial. This case being taken up by the Commons as "a breach of privilege," they intrusted the management of the impeachment to Serjeant Wilde, who opened it at the bar of the House of Lords, at prodigious length, and with great learning. Having examined all the precedents

* Ante, Vol. II. Ch. LXV. † 2 Parl. Hist. 1089. ‡ Ib. 1090. 4 St. Tr. 120.

which could throw light upon the subject, he came to the defendant's plea. "But for the excuse under which he seeks to shelter himself, *that it is the King's command*, this adds more to his offence; a foul aspersion on his Majesty, and wrong to his gracious Master; for he could not but know that the King's command in things illegal is utterly frustrate and of no effect; his patents and grants, if against the Crown in matter of interest, are merely void *quia in deceptione Regis;* if against the weal public, they are *ipso jure vacua;* much more his command in matters criminal, because no action lies against him." The Serjeant then said that many aggravating circumstances might be added, "as the Attorney's profession and knowledge of the law,—his long experience in the course and privileges of parliament, having been so often and of late a member of the House of Commons, and obliged to them by many favours, and now an assistant or attendant in the House of Lords."*

Sir Thomas Beddingfield, Sir Thomas Gardiner, and some juniors, had been assigned by the House as counsel for the defendant, and he now prayed to be heard by them,—which he claimed as a right, being only charged with a misdemeanour; but Serjeant Wilde exclaimed, "We are a committee representing the House of Commons, and it doth not stand with the dignity of our House to have counsel come to confront us." He further alleged that this offence of Mr. Attorney's had been voted an high breach of the privileges of parliament, "which no counsel can, neither ought they, to judge of."†

It must be confessed that Serjeant Wilde, a most meritorious and useful member of the Lower House, did sometimes push his privilege notions to a most extravagant length. On this occasion the Lords very properly decided, "that Mr. Attorney should have the benefit of counsel." It being late, the House then adjourned.

Next morning a scene took place at the bar, to be recorded by me with pain, as being little creditable to my profession, which, with very few exceptions, has shown great independence and spirit, entitling itself to the respect and gratitude of the nation. [March 11, 1642.]

Serjeant Wilde, in the name of the Commons, intimated that, notwithstanding the erroneous decision of the Lords, "counsel would appear and plead for the defendant at their own peril," and very intelligibly threatened them with the vengeance of the House of Commons. Beddingfield and Gardiner, instead of boldly and manfully doing their duty to their client, and rejoicing in the dangers they had to encounter in braving the Commons,—when they were called upon to proceed, in a sneaking and paltry manner pretended that they were not prepared, as "a question of privilege," had been unexpectedly started upon them,—and they prayed for delay. The Lords construed this into a refusal to plead, and contempt of the authority of the House, and very properly committed them both to the Tower, there to remain during pleasure.‡

* 4 St. Tr. 123. † 2 Parl. Hist. 1125. 4 St. Tr. 124.

‡ Having lain in prison six days, on their humble petition they were released.—4 St. Tr. 127.

On the petition of the defendant, the House assigned him two other leading counsel, Serjeant Green and Serjeant Pheasant; but they being sent for, pitifully excused themselves on the ground that, having been so suddenly called in, they could not do justice to the defence. The defendant's junior counsel, Hearne and Chute, who, to their honour, had been willing from the beginning to do their best for their client, whatever might befall themselves, were now heard, and spoke for him with great ability.

Finally, he was himself heard as to the right of the Attorney-General to originate such a prosecution without a grand jury; and he showed several instances of charges of treason, originated by the Attorney-General, *ex officio*, before the Lords, as that against the Earl of Bristol at the commencement of the present reign; but these were all against Peers, and no instance could be found since MAGNA CHARTA of an attempt to convict a Commoner in this manner, without the intervention of a jury.*

The Lords found the defendant guilty; but, as far as he was concerned, considered it rather a venial case, and he had nearly escaped with a nominal punishment. The sentence finally agreed upon was,—"That he was disabled and made incapable of being a member, assistant, or pleader in either House of Parliament, and all offices, save that of Attorney-General, which he now holds, and that he should be forthwith committed to the Fleet."†

He thus retained his office of Attorney-General, to the great annoyance of those who wished to have seen it conferred upon St. John.

He was liberated from jail just about the time when the King left London. He joined his royal Master at York, and remained faithful to him amidst all the vicissitudes of the civil war. He did not, like some other lawyers, both royalists and republican, throw aside his gown and put on harness; but he assisted as a civilian with his advice and his pen, and was generally respected by the cavaliers, although much disliked by Sir Edward Hyde, who, from jealousy, tried to keep him at a distance from the King, and to depress him as much as possible. He stationed himself during the war at Oxford, and acted as assistant to the House of Lords in the rival parliament held there in 1644.

Among the doquets of the patents of Letters Patent, and other instruments which passed under the Great Seal at Oxford in the time of Charles I., is the entry of "a discharge for Sir Edward Herbert, Knight, continuing no longer in the office of his Majesty's Attorney-General;" and another of "a patent to Sir Thomas Gardiner, Knight, of the office of his Majesty's Attorney-General, with all fees, profits, rewards, and privileges thereto belonging;" but Dugdale takes no notice of this change, and Clarendon continues to designate Herbert by the title of Attorney-General till the time when he was made Lord Keeper.

[Nov. 1, 1645.]

[Nov. 3, 1645.]

He never would acknowledge the authority of the parliament; and

* 4 St. Tr. 129. † Ib. 130.

when the royal cause was desperate, he went abroad and joined the Prince in Holland. Here he was much favoured [A. D. 1647.] by Prince Rupert; but in all the intrigues of the little Court he was crossed by his old personal enemy, Hyde, who, under the title of Chancellor of the Exchequer, wished to guide every thing by his own single opinion, and who says that at this time "the Attorney-General, Herbert, of all men living, was most disposed to make discord and disagreement between men, all his faculties being resolved into a spirit of contradicting, disputing, and wrangling upon any thing that was proposed. He having no title or pretence to interpose in councils, found it easy to infuse into Prince Rupert, who totally resigned himself to his advice, such arguments as might disturb any resolution."* This chiefly refers to the employment of the small naval force [A. D. 1648.] under Rupert's command, with which he for some time carried on a buccaniering warfare against English commerce.

Clarendon, for once, was softened towards his rival by kindness shown him in distress. After relating the dangerous adventures which he and Lord Cottington had encountered when taken by freebooters, and carried into Ostend, on their way to join Charles in Holland, he says, "They had not been an hour at the Hague when Herbert, the Attorney-General, came to them and congratulated their arrival, and told them how much they had been wanted, and how much Prince Rupert longed for their company." But the merit of this courtesy he lessens by the observation, "The Prince of Wales's Court was full of faction and animosity against each other, so that the new-comers were not only very well received by the Prince, but very welcome to every body, who being angry with the other Councillors there, believed that matters would be better carried now they were come."

The noble historian's inextinguishable spleen soon after again breaks out in his narration of a fracas in which Lord Colepepper received a black eye from Sir John Walsh. This he ascribes to a breach of confidence on the part of the Attorney-General, who had been told of a discussion in council respecting Walsh's character, and "who was the unfittest man living to be trusted with such a secret, having always about him store of oil to throw upon such a fire."†

The next notice we have of the subject of this memoir is in Clarendon's account of the Declaration in the name of the new Sovereign, which he himself prepared, on the news [Feb. 1649.] arriving of the death of Charles I. The Prince of Orange insisted that this should be communicated to Herbert, "as one who was like to make a judgment how far any thing of that nature was like to be acceptable and agreeable to the people;" and the author was very indignant that his composition should be submitted to such criticism, but was obliged to adopt several alterations which were suggested to make it less unpalatable to the Presbyterians.‡

When Charles went into Scotland, and for a time became a "covenanted King" under the Marquis of Argyle, Herbert remained on the Continent in the suite of the Duke of York, [A. D. 1650.]

* Hist. Reb. b. xi. † Ib. b. xi. ‡ Ib. b. xii.

—attended him to the Court of the Duke of Lorraine, and is accused by Clarendon, without proof or probability, of having there tried to marry him to a natural daughter of that Prince. He gave entire satisfaction to the royal family, and particularly to the Queen Mother, who would have shrunk with horror from the notion of a *mésalliance*, as Clarendon himself afterwards found—from her disdainful refusal to acknowledge his own daughter, as her daughter-in-law.

Herbert joined the young King at Paris on his arrival there, after the [A.D. 1651.] battle of Worcester, and was kindly received by him. I have already related how he was afterwards invested with the dignity of Lord Keeper of the Great Seal.* Clarendon in vain attempted to conceal his extreme mortification at this appointment; and tries to comfort himself by saying that "the King knew the man very well, and had neither esteem nor kindness for him, and was only influenced by the Queen to make the Attorney-General Lord Keeper, which was a promotion very natural, men ordinarily rising from the one office to the other. So his Majesty called him to his Council, and made him Lord Keeper of the Great Seal, with which he seemed wonderfully delighted, and for some time lived well towards every body; though to any thing of business he appeared only in his old excellent [April, 1653.] faculty of raising doubts, and objecting against any thing that was proposed, and proposing nothing himself; which was a temper of understanding he could not rectify."†

I shall not be expected to give an account of Lord Keeper Herbert's speeches in opening parliaments,—of the manner in which he despatched business in the Court of Chancery,—or of legal reforms introduced by him. He held the Great Seal rather more than a year, during all which time he was resident at Paris; and, if we are to credit his historiographer, he was employed in stirring up rather than in composing strifes. The implacable enmity between him and Hyde kept the Court in a state of constant agitation. The account we have of his conduct places him uniformly in the wrong, but this coming from such a quarter, and being entirely *ex parte*, must be received with many grains of allowance.

We are told that Herbert excited Long, the Secretary of State, to bring a false charge against "the Chancellor," (for this is the pompous title by which Hyde always designates himself at this time, that he might not appear of inferior rank to his rival, the "Lord Keeper,"‡) of having gone over to England and had a secret interview with Cromwell, and that, when this was shown to be ridiculous, Herbert himself charged "the Chancellor" with having slandered the King. The witness in support of this charge was Lord Gerard, who swore that "Sir Edward Hyde had lamented to him *that the King was so fond of pleasure, and so averse to business*." The accused party answered, "that he did not recollect exactly what had passed in a private conversation supposed to have taken place a year ago, but if the Lord Gerard would positively

* Ante, p. 101. † Hist. Reb. b. xiv.
‡ He was nominally Chancellor of the Exchequer.

affirm he had used such language, he would rather confess it, and submit himself to his Majesty's judgment, whether such words could be thought to proceed from any malice of his heart towards him, than, by denying it, continue the debate." The "CHANCELLOR" then offered to retire, but the King forbade him, upon which the "KEEPER" was very angry, and said "the words amounted to an offence of a high nature; and that he was sorry his Majesty was no more sensible of them: that for any man, especially a Councillor, and a man in so near a trust, to accuse his Master of not loving his business, and being inclined to pleasures, was to do all he could to persuade all men to forsake him." While he was proceeding, with great warmth and positiveness, the King interrupted him, and said, "I do really believe, that the faithful Councillor now blamed has used those very words, because he has often said that and much more to myself; which I have never taken ill; and I do really believe I am myself in fault, and do not enough delight in business, which I must own is not very pleasant to me." But he declared "that he was well satisfied with *the Chancellor's* affection towards him, and took nothing ill that he had said;" and directed an entry to that effect to be entered in the books of the Council.*

At this time there was a considerable chance that Herbert might have continued in office and in favour till the restoration of the King; and then as Lord Chancellor and Prime Minister, he might have guided the destinies of the country; but after a hard struggle his rival triumphed, the Lord Keeper was dismissed, and he died in exile of a broken heart.

[MAY, 1654.]

Prince Rupert, his great patron, having left the Court in disgust, had now retired into Germany, and Hyde, by unwearied assiduity, had for a time softened the dislike to him felt by the Queen mother. Charles was often told, that all the disputes among his followers arose from the ill temper of Lord Keeper Herbert, and in the hope of a more quiet life, determined to sacrifice him. He took the opportunity of effecting his purpose, when, in consequence of the strict alliance between Cardinal Mazarine and Cromwell, he was about to remove from France into the Low Countries. "He could not forget," says Clarendon, "the vexation the Lord Keeper had always given him, and how impossible it was for him to live easily with any body, and so in making the list of those who were to go with him, he left his name out, and thereupon, this coming to the knowledge of the Keeper, he sought the King, and asked him, *if he did not intend that he should wait upon him.* His Majesty told him, *No! for that he resolved to make no use of his Great Seal; and therefore that he should stay at Paris, and not put himself to the trouble of such a journey which he himself intended to make, without the ease and benefit of a coach.*† The Keeper expostulated with him in vain upon

* Hist. Reb. 786. This anecdote is at all events very creditable to Charles, and deserves to be more generally known.

† Charles was too poor to keep a carriage for some years after, and in this journey yoked two old coach-horses which he had to a wagon, to carry his bed and his clothes.

the dishonour that it would be to him to be left behind, and the next [JULY, 1654.] day brought the Great Seal and delivered it to him, and desired *that he would sign a paper in which his Majesty acknowledged that he had received again his Great Seal from him*, which the King very willingly signed."*

On whatever terms they parted, they never met more. Stung by what he considered the ingratitude of that family for whom he had renounced his profession, his family, and his country, he gave up all intercourse with them, and as they would forget nothing and learn nothing, he considered that they were irredeemably doomed to destruction. However, he would by no means attempt to make his peace with the Cromwellians, whom he held in unabated abhorrence. When Charles, attended by Hyde, Cottington, and Colepepper, proceeded to the Low Countries, Herbert took an obscure lodging in one of the fauxbourgs of Paris, and there he languished for three years, neglecting all the world and neglected by it. Had he, according to the example of his rival, employed this time in recording the eventful scenes through which he passed, he might have thrown a very different light upon them from that in which we view them; he might have achieved a considerable name in history for himself, and his chance of being remembered as an English lawyer and statesman would not have depended on this imperfect memoir. Having lived in entire seclusion and idleness,—his mind a prey to discontent and despair,—he expired at Paris, in the autumn of the year 1657, at a time when Cromwell was courted by all the powers of Europe, and the star of the Stuarts seemed to have set for ever.

There are no sufficient materials to judge fairly of his character beyond pronouncing him a man of high principle, whose conduct was ever consistent and honourable. There is reason to think that, though a sincere Protestant, he was more tolerant on religious matters than his successful rival, and that, if he had remained in office till the King's return, the settlement of the Church might have been more comprehensive, and more in accordance with the expectations held out to the Presbyterian party, by whose efforts the monarchy was re-established. Yet, not only in literature, but in a knowledge of mankind and aptitude for affairs, he must be allowed to be greatly inferior to the man by whom he was supplanted.

Upon the Restoration, his services were remembered and his family was patronised. His eldest son rose to a high command in the army, and was slain fighting for King William at the battle of Aghrim. His second son was the great naval officer who fought at Beachy Head, and was created Earl of Torrington. His third son became Chief Justice of the King's Bench under James II., followed him into exile, was made by that Sovereign Lord Keeper of the Great Seal *in partibus*, and if there had been another restoration of the Stuarts might have stood in the list of "Lord Chancellors," whose lives I have to record.†

* Hist. Reb. b. xiv. † L. L. C. 131.

CHAPTER LXXIV.

LIFE OF LORD CHANCELLOR CLARENDON FROM HIS BIRTH TILL THE EXECUTION OF LORD STRAFFORD.

I NOW enter upon a task of great difficulty—embarrassed not by the scantiness, but by the superfluity of my materials.

"Inopem me copia fecit."

The subject of this memoir was personally concerned in many of the most important events which marked the thirty most interesting years to be found in our annals; by his own voluminous writings, and those of his contemporaries, we are amply informed of all he did, and said, and thought; and more praise and censure have been unduly lavished upon him than perhaps on any other public man who ever appeared in England. But striving to condense, and keeping in view the just boundaries of biography and history, I must not omit any statement or observation which I may deem necessary to convey an adequate notion of his career and of his character.

EDWARD HYDE was of a respectable gentleman's family, which for centuries had been settled in the county of Chester, and, in Scottish phrase, had been "Hydes of that ilk," being possessed of an estate by the name of which they were designated when surnames came into fashion. Lawrence, his grandfather, a cadet of this family, migrated into the West, and established himself at Dinton, in the county of Wilts. Henry, the Chancellor's father, studied the law in the Middle Temple, but marrying a Wiltshire lady "of a good fortune in the account of that age," he became a country squire after having travelled through Germany and Italy. He sat in several parliaments; but having neither hope of Court preferment, nor ambition to complain of grievances, he resolved to devote the remainder of his days to country pursuits and pleasures. "From the death of Queen Elizabeth he never was in London, though he lived above thirty years after; and his wife, who was married to him above forty years, never was in London in her life; the wisdom and frugality of that time being such, that few gentlemen made journeys to London, or any other expensive journeys, but upon important business, and their wives never; by which they enjoyed and improved their estates in the country, and kept great hospitality in their houses, brought up their children well, and were beloved by their neighbours."*

The Chancellor was born at Dinton on the 18th of February, 1609. He received his early classical education under the paternal roof from the vicar of the parish, who, "though of very [A. D. 1609.]

* Life of Clarendon, i. 5.

indifferent parts, had bred good scholars;" but he was chiefly grateful to "the superintending care and conversation of his father, who was an excellent scholar, and took pleasure in conferring with him."

In his fourteenth year he was sent to the University of Oxford, and admitted of Magdalen Hall. Being then a younger son, he was intended for holy orders; but he did not make much progress in theological studies, and having taken his Bachelor's degree in February, 1626, he quitted the University "rather with the opinion of a young man of parts and pregnancy of wit, than that he had improved it much by industry."*

About this time his elder brother died, and he was entered a student [A. D. 1625.] of law in the Middle Temple, under the care of his uncle, Sir Nicholas, afterwards Chief Justice of the King's Bench, then Treasurer of that Society.

But his studies were seriously interrupted, first, by the plague which raged for some months in London, and then by a lingering attack of ague when he had retreated into the country. It was Michaelmas term, 1626, before he was able to establish himself regularly in chambers. He confesses that he had contracted a habit of idleness and of desultory reading, and that, when he returned, "it was without great application to the study of the law for some years." He now spent most of his time with "swash bucklers" and discharged military officers who had fought in Germany and the Low Countries, accompanying them to fencing-schools, ordinaries, and theatres. But he assures us that his morals were not contaminated by these dangerous associates; and this being so, he seems rather to have reflected with satisfaction on the opportunity he then improved of acquiring a knowledge of men and manners. He says, "that since it pleased God to preserve him whilst he did keep that company, and to withdraw him so soon from it, he was not sorry he had some experience in the conversation of such men, and of the license of those times,"—adding, with considerable felicity, "that he had more cause to be terrified upon the reflection than the man who had viewed Rochester Bridge in the morning that it was broken, and which he had galloped over in the night."† He was fond of literature, and he employed several hours each day in reading; but he would utterly have neglected Plowden and Coke, which then showed the newest fashions of the law, if it had not been for his uncle, Sir Nicholas, who questioned him about the "moots" he attended, and often "put cases" for his opinion. But natural disposition, or the prospect of succeeding to a comfortable patrimony, still made him affect the company of the gay and the dissolute.

In the summer of 1628, the old Chief Justice, with a view of compelling him to mix with lawyers, appointed him to "ride" the Norfolk circuit as his Marshal. Unfortunately at Cambridge, the first assize town, he was attacked by the smallpox, and he was so ill that his life

* Life, i. 8.

† Life, i. 10. In his old age he bestows this qualified commendation on this passage of his youth, that "he was desirous to preserve himself from any notable scandal of any kind, and to live *cautè* if not *castè*."—*Life*, iii. 974.

was despaired of; but at the end of a month he was able to proceed to his father's in Wiltshire.

Soon after the recovery of his health, a circumstance occurred which gave a new turn to his views and his character. He fell desperately in love with a Wiltshire beauty, the daughter of Sir George Ayliffe, a young lady with no fortune, though of good family and high connexions. His indulgent father consented to their union. He thus became allied to the Marquess of Hamilton, and "was introduced into another way of conversation than he had formerly been accustomed to, and which, in truth, by the acquaintance, by the friends and enemies he then made, had an influence upon the whole course of his life afterwards."* But his domestic happiness came to a sudden termination. In little more than six months after his marriage, his young wife, in a journey from London into Wiltshire, caught the malignant smallpox and died. When he was sensible of the loss he had sustained, he was so overwhelmed with grief that he could hardly be restrained by his father from resigning his profession, and seeking seclusion in a foreign land.

He remained a widower near three years, the greater part of which time he devoted to books, but neither then, nor at any period of his life, did he attend very seriously to the study of the law,—with the technicalities of which he was never familiar. He continued to cultivate the high-born relatives of his late wife, and he made acquaintance with Ben Jonson,† Cotton, Isaac Walton, May, Carew, Edmund Waller, Sir Kenelm Digby, and Chillingworth. His manners were more polished and agreeable than those of most lawyers, and he was kindly noticed, not only by Lord Keeper Coventry, but by the Earl of Manchester, Lord Privy Seal, the Earl of Pembroke, Lord Chamberlain, the Earls of Holland, Hereford, and Essex, and others of great consequence about the Court. His regard for the members of his own profession he chiefly confined to Lane, Attorney-General to the Prince, and afterwards Lord Keeper, Sir Jeffrey Palmer, then a rising conveyancer, afterwards Attorney-General to Charles II., and Bulstrode Whitelock, then getting into the lead on the Oxford circuit, afterwards Lord Keeper to the Commonwealth,—with all whom he was at this time on a footing of the most friendly intercourse, although their courses were afterwards so devious.‡ But the man with whom, he tells us, he had the most entire friendship, and of whom he speaks in terms of the highest admiration and affection, was Lucius Carey, Lord Falkland,—in all whose sentiments he continued ever heartily to concur, till this bright ornament of his country fell in the battle of Newbury.

* Life, i. 18.

† "He (Ben Jonson) had for many years an extraordinary kindness for Mr. Hyde, till he found he betook himself to business, which he believed ought never to be preferred before his company."—*Life*, i. 30. Hyde preferred Ben to all poets, living or dead, except Cowley, but does not seem to have been at all acquainted with the writings of Shakspeare.

‡ In Whitelock's Memorials we have an amusing extract of a letter addressed to him in the country, from Hyde in the Temple: "Our best news is that we have good wine abundantly come over; and the worst, that the plague is in town, *and no Judges die.*"

Hyde having recovered his spirits, again entered the married state, [A. D. 1632.] and formed a most auspicious union, which proved the great solace of his life. The lady was Frances, daughter of Sir Thomas Aylesbury, Master of the Mint. Having been his companion in all the vicissitudes of his fortune,—having lived with him in exile, sharing in his dangers and privations, and with difficulty providing food and raiment for their children,—she was preserved to see him Earl of Clarendon, Lord Chancellor, and Prime Minister of England.

His happiness was in a few months interrupted by the sudden death of his father. Burnet relates that, walking in the fields together, the old gentleman warned him of the disposition then observable among lawyers to stretch law and prerogative to the prejudice of the subject; charged him, if he ever grew to any eminence in his profession, that he should never sacrifice the laws and liberties of his country to his own interests, or to the will of a Prince; and that, having repeated this twice, he immediately fell into a fit of apoplexy, of which he died in a few hours.* Clarendon himself wrote thus to a friend:—"Without one minute's warning or fear, I have lost the best father in the world, the sense of which hath been so terrible to me, that I was enough inclined to think I had nothing to do but to follow him."

The shock being over, he resolved, instead of renouncing the world, and living in retirement on his small estate, to continue to cultivate his profession, in the hope of rising to eminence, and with the resolution to observe the dying injunction of his father. "He put on his gown as soon as he was called to the bar, and, by the countenance of persons in place and authority, as soon engaged himself in the business of the profession as he put on his gown, and to that degree in practice that gave little time for study that he had too much neglected before."† He would not submit to the drudgery of "riding a circuit,"—which he afterwards lamented, "both because it would have improved his acquaintance with various classes of his countrymen, and because there is a very good and necessary part of learning in the law which is not so easily got any other way;"‡ but he regularly attended the Courts at Westminster, and diligently devoted himself to the business of any clients who employed him. Though not much of a lawyer compared with the black-letter men of those days, he could, by his books and his friends, get up a respectable argument, even against Selden or Noy, and having a much better delivery, he was sometimes thought by the bystanders to be superior to them in learning as well as eloquence. He lived handsomely in London, and exercised a distinguished hospitality at his house in Wiltshire; but, though he was rather fond of talking of wines and dishes, he was very temperate, and generally abstained from supper, the meal at which those who were fond of good living most indulged.

His growing eminence appears from the fact that at the grand masque

* Burn. Times, i. 270. † Life, iii. 974, 975.

‡ Life, i. 32. He regretted the want of this practice so much, that he meant to have joined a circuit when the troubles broke out.

given by the Inns of Court to the Queen, which we have several times had occasion to allude to, the task was allotted to him, along with Whitelock, of conferring with the Lord Chamberlain and the Comptroller of the household, and taking order about the scenery and preparations in the banqueting house, and he was deputed by the Middle Temple to the office of returning thanks in the name of the four Inns of Court to the King and Queen, "for their gracious acceptance of the tender of their service in the late masque."* [A. D. 1633.]

In this mixture of business and pleasure some years rolled on, by far the happiest period of the life of Clarendon. "With an excellent wife, who perfectly resigned herself to him, and who then had brought him, before any troubles in the kingdom, three sons and a daughter, which he then and ever looked upon as his greatest blessing and consolation,"† his practice steadily increased, particularly before the Privy Council; he was respected by his own profession; he kept up an intercourse with men eminent in literature; he was countenanced by powerful courtiers; and he had before him a fair prospect of reaching the highest honours of his profession.

The system of ruling by prerogative alone having been pursued ever since he was of age, he had no opportunity of acquiring parliamentary reputation. In his heart he highly disapproved of "ship money," and the arbitrary proceedings of the Star Chamber; but he was moderate in his principles and cautious in his conversation, and, trying to live well with both parties, I do not find that he was employed in any of the great political cases which then attracted the attention of the nation. However, in a dispute which the merchants of London had with the Treasury as to their being compelled to unload their goods at a particular quay, Hyde was their counsel, and he here displayed what was considered great courage against the government. This introduced him to Archbishop Laud, then chief Commissioner of the Treasury, who wished to see the young lawyer who was not afraid to plead the cause of the merchants, "when all men of name durst not appear for them." Hyde consequently went to the Archbishop, whom he found alone in his garden at Lambeth, was received by him very civilly, and was afterwards treated by him with great condescension and kindness.‡

* As this is, I trust, my last notice of this performance, I may be permitted to say I am sorry for the credit of the Inns of Court, that they were obliged to apply to Shirley the poet, to write them "The Triumph of Peace," the masque then exhibited to show their detestation of the *Histriomastix*, and of the coarse words supposed to be applied to the Queen for her love of theatricals; but they likewise escape the disgrace of Shirley's ironical dedication of the "Bird in a Cage" to Prynne, then in gaol under the inhuman sentence of the Star Chamber,—congratulating him on his "*happy retirement*."

† Life, i. 75.

‡ I am glad to say a good word for Laud when it is in my power, and he certainly deserves credit for his patronage of merit. He brought into notice Jeremy Taylor; and though the fantasy must be condemned of making Bishop Juxon Lord High Treasurer, it should be recollected that this prelate not only kept the best appointed pack of fox-hounds in England, but was a most kind-hearted pious man, and so inoffensive that even faction could not find fault with him.

Those who regret the strong high church bias which he afterwards displayed, impute it to the impression now made upon him by his visits to Lambeth, and think it might have been better for the cause of religion in England if he had been thrown into the company of Bishop Williams, Ex-keeper of the Great Seal, who was then leading the opposition against ceremonies and doctrines, which he contended led directly to Romanism.

At last Charles was driven to call a parliament, and Hyde was in [APRIL, 1640.] such good repute in his own county that he was returned both by Shaftesbury and Wootton Basset. He made his election to serve for the latter town, which had likewise the honour of first sending to the House of Commons Twiss, the eminent lawyer, and the biographer of Lord Eldon. Hyde's public career now begins, and he certainly started with most enlightened and praiseworthy views. A friend to the monarchy, he deeply regretted the abuses which had been practised in the name of prerogative, and was eager to correct them. For this purpose he associated himself with Pym, Rudyard, Whitelock, and the most experienced statesmen and lawyers, who, during this "short parliament," co-operated with him in the same cause.

He had the honour of striking the first blow in the House at a specific grievance. This was by a motion for papers respecting the Court of Honour, or Earl Marshal's Court, which, under pretence of guarding heraldic distinctions, had become a powerful engine of oppression. He mentioned several instances with great effect. A citizen was ruinously fined by this Court, because, in an altercation with an insolent waterman who wished to impose upon him, he deridingly called the *swan* on his badge "a goose." The case was brought within the jurisdiction of the Court by showing that the waterman was an earl's servant, and that the swan was the earl's crest. The citizen was severely punished, for "dishonouring" this crest. Again, a tailor who had often very submissively asked payment of his bill from a customer of *gentle blood*, whose pedigree was duly registered at the Herald's College, on a threat of personal violence for his importunity, was provoked into saying that "he was as good a man as his creditor." For this offence, which was alleged to be a levelling attack upon the aristocracy, he was summoned before the Earl Marshal's Court, and mercifully dismissed with a reprimand—*on releasing the debt.* While the House was thus amused and excited, Hyde successfully concluded his maiden speech by telling them that not only was this Court oppressive to the humbler classes, but that its exactions were onerous to the nobility themselves, and to the whole body of the gentry of England.*

So active was he, that his name is to be found in seven of the twenty-one select committees which were appointed during the sixteen days the Commons sat, including "the committee of privileges and elections," "the committee on ship money," and "the committee to inquire

* Com. Jour. April 18, 1640. The business only began on the 16th of April, after the choice of the Speaker.

into the proceedings of the convocation and innovations in matters of religion."

Very soon after he showed his moderation by supporting the Court on the grand question of supply. An indiscreet message had been brought down from the King, demanding twelve subsidies to be paid in three years, and making the abolition of ship money depend upon this specific grant. Hampden, described as being now "the most popular man in the House," dexterously demanded that the question to be put might be, "Whether the House would consent to the proposition made by the King *as it was contained in the message?*"—so as to insure the rejection of the King's proposition.

Hyde, not dreading the collision into which he was brought, nor the misconstruction to which he might be liable, with great moral courage desired that the question, as proposed by Mr. Hampden, might not be put. He argued that "it was a captious question, to which only one sort of men could clearly give their vote, which were they for rejecting the King's proposition and no more resuming the debate upon that subject, but that they who desired to give the King a supply, as he believed most did, though not in such a proportion, nor it may be in that manner, could receive no satisfaction from that question; and therefore he proposed, to the end that every man might frankly give his *yea* or his *no*, that the question might be put only upon the giving the King a supply."*

There were loud cries for Mr. Hyde's question, when old Sir Harry Vane, the Treasurer of the household (as some thought treacherously), declared that there would be no use in that question, for he had authority to say that a supply would not be accepted by his Majesty if it were not granted in the proportion and manner proposed in his message. Hyde therefore no longer pressed his amendment, and the debate on the general question was adjourned till the following day, the courtiers threatening an immediate dissolution.

Hyde, foreseeing the fatal consequences of such a step, instantly repaired to Laud, on whose advice in the absence of Strafford it was supposed the King would act, and finding him in his garden at Lambeth, told him he feared a dissolution was meditated, and that "he came only to beseech him to use all his credit to prevent such a desperate counsel, which would produce great mischief to the King and to the Church, assuring him that the House was as well constituted and disposed as ever House of Commons was or would be." The Archbishop heard him patiently, but differed from him entirely as to the disposition of the House, and affected to say that he would not advise a dissolution, but neither would he counsel the King against it.

On returning to the House from this interview, Hyde was more grieved than surprised by the Black Rod's summons for the Commons forthwith to attend his Majesty in the [AP. 19, 1640.]

* Hist. Reb. b. i. This is the mode in which the question is now put, the motion being "that a supply be granted to her Majesty."

House of Lords, and by there hearing him, with expressions of great displeasure, dissolve the parliament.

All were struck with consternation, except a few hot-headed courtiers and some deep designing men, who did not wish to obtain redress by temperate means, and were desirous of aggravating dissension between the parliament and the Crown, with a view to important organic changes in the constitution. One of these was Oliver St. John, who, with an air of unusual cheerfulness, met Hyde an hour after the dissolution, and hearing him deplore the unseasonable dismissal of "so wise a parliament," answered with warmth—"All is well: it must be worse before it can be better: this parliament would never have done what must be done before it is merry in England."

"No man can show me," wrote Clarendon, when, after the lapse of many years, he recalled this scene to his memory, "a source from whence these waters of bitterness we now taste have more probably flowed than from these unseasonable, unskilful, and precipitate dissolutions of parliament."*

To his unspeakable grief, this dissolution was immediately followed by measures which indicated a determination that parliament should never meet again,—popular leaders being committed to the Fleet for refusing to disclose what had passed in the House,—ship money being exacted more rigorously than before,—a new tax being levied on the counties under the name of "Coat and Conduct Money,"—and four aldermen of London being sent to gaol for declining to contribute to a forced loan in the City.

But before the end of the same year it was found, that if the King had attempted to trust longer to mere prerogative he would have ceased to reign.

Hyde sat in the Long Parliament for the borough of Saltash. His conduct in the first session of it entitles him to be placed in the first rank of English Reformers. [Nov. 1640.] He began by sacrificing his lucrative profession to the discharge of his public duties. Without office, or any immediate prospect of political preferment, he left the bar, reserving to himself the right to return to it in quieter times, and he bent the whole energies of his mind to the constitutional correction of existing abuses. While he zealously supported the great measures brought forward by others for abolishing the Star Chamber and High Commission, for determining the boundaries of the royal forests, for preventing the arbitrary levy of customs upon merchandise, and for insuring the frequent meeting of parliaments, he himself originated and carried through several very important reforms.

He began with his old subject, the Earl Marshal's Court, and moved for a select committee to inquire into its oppressions. This obnoxious Court had not relaxed in its mischievous activity since its recent exposure, and Hyde, who now "spake smartly and ingenuously,"† said, that for words of supposed defamation, of which the law took no

* Hist. Reb. b. i. Charles had little regarded the dying advice of Lord Keeper Coventry, *ante*, Vol. II. ch. LXII.

† Whit. Mem. 50.

notice, more damages had been given by the sole judgment of the Earl Marshal in two days, than by juries in all the actions tried in all the Courts in Westminster Hall during a whole term. He further proved, that this supposed Court was a mere usurpation during the present reign, the earliest precedent of its having entertained a suit for words being in the year 1633. The committee reported, "that the Constable's and Earl Marshal's Court has no jurisdiction to hold plea of words, that the Earl Marshal can make no Court without the Constable, and that the Earl Marshal's Court is a grievance." The report was adopted by the House; and so palpable was the usurpation which, unchecked, might have been confirmed by usage, that the Earl Marshal begged pardon for what he had done, throwing the blame upon his advisers, and, without any bill to abolish it, "the Court never presumed to sit afterwards."

Hyde was a member of the committee for inquiring into the illegal conduct of the Judges respecting ship money, and assisted Lord Falkland in preparing the charges against Lord Keeper Finch. He presented a report from the committee, which so deeply implicated Mr. Justice Berkely, that the learned Judge, while sitting in the Court of King's Bench in his robes, was arrested, and brought away prisoner through Westminster Hall, then full of people. But his unmeasured exposure of "judicial delinquency," was at a conference with the Lords respecting the Barons of the Exchequer, which he thus began: "My Lords, there cannot be a greater instance of a sick and languishing commonwealth than the business of this day. Good God! how have the guilty these late years been punished, when the Judges themselves have been such delinquents? It is no marvel that an irregular, extravagant, arbitrary power, like a torrent, hath broken in upon us, when our banks and our bulwarks, the laws, were in the custody of such persons. Men who had lost their innocence could not preserve their courage; nor could we look that they who had so visibly undone us, themselves should have the virtue or credit to rescue us from the oppression of other men. It was said by one who always spoke excellently, *that the twelve Judges were like the twelve lions under the throne of Solomon*,—under the throne in obedience, but yet lions. Your Lordships shall this day hear of six, who (be they what they will be else) were no lions; who upon vulgar fears delivered up the precious forts they were trusted with almost without assault, and in a tame and easy trance of flattery and servitude, lost and forfeited (shamefully forfeited) that reputation, awe, and reverence which the wisdom, courage, and gravity of their venerable predecessors had contracted and fastened to the places they now hold; and even rendered that study and profession, which in all ages hath been, and I hope now shall be, of an honourable estimation, so contemptible and vile, that had not this blessed day come, all men would have had this quarrel to the law itself, which Marius had to the Greek tongue, who thought it a mockery to learn that language, the masters whereof lived in bondage under others. But it is in your Lordships' power (and I am sure it is in your Lordships' will) to restore the dejected broken people of this island to their former joy and secu-

rity, the successors of these men to their own privilege and veneration, *et sepultas prope leges revocare.*"* Having dwelt upon the resolution in favour of ship money, which he denounced as "a prodigy of crime," he came to the misconduct of the Barons, in going so far as to deny the subject the opportunity of being heard against the illegal increase of duties on importations, by refusing replevies, and in sanctioning the levying of tonnage and poundage without authority of parliament.—If we do not altogether approve his rhetorical figures, we cannot but admire his sentiments, and the boldness and vehemence with which he urged them. The known moderation of his character gave additional weight to his efforts against the Judges, and he was mainly instrumental in bringing down punishment upon them, and in procuring the condemnation of the slavish doctrines which they had inculcated.

The next subject which he took up was "the Council of the North," [April, 1641.] which had been established by Henry VIII. after an insurrection, and being continued without any regard to the rules of the common law, had become,—particularly under the presidency of the Earl of Strafford,—a scourge to the northern counties. He clearly showed its illegality and its mischiefs,—and after a conference with the Lords, in which he made another long speech against it, he procured its suppression.

He testified his sincere desire of a peaceable settlement by earnestly joining in the negotiations with the merchants in the City to raise money for paying the arrears due to the Scottish army, and enabling them to return to their own country, although the more violent party wished them to remain as a check upon the King; and Strode said publicly in the House, "We cannot yet spare the Scotch; the sons of Zeruiah are too strong for us."

A controversy has arisen respecting the part taken by Hyde in the prosecution of the Earl of Strafford. In his account of it in the History of the Rebellion, he never once introduces his own name, and he censures those who conducted it. But though he thought fit thus to write long after the event, there cannot be a doubt that he, as well as Lord Falkland, at the meeting of the Long Parliament looked with abhorrence upon the apostate who had systematically attempted to establish despotism in England and in Ireland,—that they both thought that he deserved death, or reconciled it to their consciences that he ought to die, on the ground that his existence was incompatible with the public safety,—and that they both were instrumental in bringing him to the scaffold.

Hyde, when denouncing that unconstitutional tribunal, the Council of the North, inveighed bitterly against the tyranny of the Earl of Strafford as its President. When, in the course of the impeachment, a difficulty [Nov. 28, 1640.] arose as to the attendance of members of the House of Commons as witnesses in the House of Lords, he was one of the committee of seven by whose assistance the difficulty

* Rushw. iv. 333.

was removed. He was originally a member of the Committee to prepare the charge against Strafford (morally speaking, the blackest of all)—for his illegal judgment of death by a court-martial on Lord Mountnorris, and he was added to the committee of impeachment for the examination of the serious charge brought forward by the petition of Lord Langdale. He acted as chief manager in a conference with the Lords, with the view of sequestrating Strafford from his offices while the prosecution was pending,—and he was added to a committee for expediting the trial. But what shows even personal animosity and vindictiveness is, that Hyde took an active part in discovering and counteracting the plan that was formed to enable Strafford, like Lord Keeper Finch and Secretary Windebank, to escape beyond the seas. He communicated the name of a suspected ship, in consequence of which an examination took place before the House of the master of the ship, and of the Lieutenant of the Tower, and he willingly bore a message to the Lords from the Commons, "that they have received information, and have reason to believe it to be true, that the Earl of Strafford intends to make his escape out of the Tower; and that there are ships, or a ship, ready in the river of Thames, at Tilburyhope, to convey him away; and farther, they are informed that the doors of the Tower are not well guarded. Therefore they desire their Lordships would take order that the Earl of Strafford may be close prisoner, and to have the Tower better guarded than now it is."*

[Jan. 6, 1641.]

[Feb. 5, 1641.]

[March 18.

[March 25.]

[April 28.]

That Hyde zealously favoured the proceeding while in the shape of impeachment is demonstrated by direct, positive, and incontrovertible evidence. I think there is as little doubt that he supported the bill of attainder, although here the evidence is only negative and circumstantial. He must have divided upon the bill, and a list was published of the members who voted against it, under the title of "Straffordians," among whom he is not found. Lord Falkland actually spoke in favour of the bill; and Hyde himself says, that the question respecting the exclusion of the Bishops from parliament, which arose afterwards, was the first question on which they had ever differed.

The only circumstance that has a contrary aspect, is an anecdote which Hyde himself relates,—very possibly with the view of conveying the impression that he was hostile to the bill,—but which, giving full credit to it, is perfectly consistent with the notion that his hostility to Strafford remained unabated to the last. After the severe duty of attendance in parliament, beginning at eight in the morning, the members of both Houses, and of both parties, used occasionally to recreate themselves by a little country excursion in the afternoon to "Pickadilly, which was a fair house for entertainment and gaming, with handsome gravel walks and shade, and where were an upper and lower bowling-green." One afternoon, Hyde, being here to recruit after a long speech he had made in the morning, was accosted by the Earl of Bedford, who,

* Com. Journ.

sincerely wishing to save Strafford, proposed the milder course of making him incapable of all future employment, said that he should not despair if he could persuade the Earl of Essex to comply, and ended with entreating Hyde to employ persuasions to the same effect. Essex coming up, Bedford left them alone together, and, falling upon the pending bill of attainder, Hyde observed that "there was a disagreement upon the point of treason, but if they declined *that*, they should all agree that there were crimes and misdemeanours evidently enough proved to deserve so severe a censure as would absolutely take away all power from the Earl of Strafford that might prove dangerous to the kingdom." Essex's laconic reply was,—"Stone-dead hath no fellow."* But Hyde m ght surely oblige the Earl of Bedford by sounding a powerful leader of the popular party in the Lords, as to the expediency of a less rigorous course against the great state delinquent, without having altered his own opinion that he should suffer as a traitor; and we must ever remember that if he had taken a different part from Lord Falkland upon this subject, his name would have been among the "Straffordians." It certainly does astonish us that such men, however they may have condemned the conduct of Strafford, could bring themselves to believe that he was guilty of the crime of high treason; for they could hardly have been deceived by the wicked sophistry of St. John, that an attempt to subvert the fundamental laws of the kingdom was high treason at common law, and still remains so,—or by the base opinion delivered by the Judges, that this amounts to high treason under the statute of Edward III. But we ought to decide upon acts according to the notions of the enlightened and the honourable in the times when they were committed, and we most be slow to reprobate the execution of Strafford, which was approved by Hyde and by Falkland.†

* Hist. Reb. b. i.

† Although the King's death was the act of a small section, that of Strafford was with the consent of the great bulk of the nation. The recent publication by the Camden Society of Sir Ralph Verney's notes, taken in pencil during the Long Parliament, affords convincing evidence of Hyde having at first taken a strong part against the Court. Thus he assisted in drawing up the Reasons in support of the first Bill for turning the Bishops out of the House of Lords (among others), "Because Bishopps' votes in parliament are a very great hindrance to their ministeriall functions; they are but for their lives, *ergo* are not so fit to have a legislative power over the inheritances, persons, and liberties of others. Because of Bishopps' dependency, and expectancy of beinge translated to places of greater profit. That several Bishopps have of late much encroached upon the consciences and liberties of the subject. Because the whole number of them is interested to maintain the jurisdiction of Bishopps, which hath been found so grievous to the three kingdoms, that Scotland hath utterly abolished it, and multitudes in England and Ireland have petitioned against it. Because the Bishopps being Lords of parliament, it setteth too great a distance between them and the rest of their brethren in the ministry; which occasioneth pride in them, discontentment in others, and disquiet to the church."—p. 82. Yet Clarendon afterwards took credit for the manner in which he manœuvred to defeat the second Bill for the same purpose, which was finally carried.

We have the following note of Hyde's speech on the 22d of November, in support of the "Remonstrance:"—

Mr. Hyde. "Wee may desier to see, but not devulge our own infirmities, noe more than a Generall the defects of his army to his enimy.

CHAPTER LXXV.

CONTINUATION OF THE LIFE OF LORD CLARENDON TILL HE WAS SENT TO BRISTOL WITH THE CHARGE OF PRINCE CHARLES.

In the "History of the Rebellion" there is strong, and I think just, censure thrown upon the bill, which was next brought forward "for the perpetual parliament," as it was afterwards [A. D. 1641.] called; but there is as little doubt that, "the noble Historian" not only acquiesced in it, but applauded it. He says, "it is not credible what an universal reception and concurrence it met with, although it was to remove the landmarks and to destroy the foundation of the kingdom." The truth is, that he and others saw the mischiefs which arise from abrupt dissolutions, but were blind to the dangers of an irresponsible oligarchy uncontrollable by constitutional means—to be overthrown only by military despotism. It is deeply to be regretted that the reasonable amendment, carried in the Lords, was rejected by the Lower House,—limiting the operation of the bill to two years,—within which time it might have been reasonably expected that all grievances might be redressed, and all constitutional controversies adjusted,—so that the power of dissolving the parliament might be safely restored to the Crown.

But although Hyde was carried away by the general impulse,—when the bill had passed, he soon saw "that the Commons now that they could not be dissolved without their own consent (the apprehension and fear whereof had always before kept them within some bounds of modesty), they called any power they pleased to assume to themselves a breach of their privileges of which they were the only proper judges."* He now changed his party, but (I must say), without being at all liable to the imputation of a change from mercenary motives, which is conveyed by the modern word "*ratting*." He did not, like Wentworth, barter his principles for preferment and power. He thought, very plausibly, that enough had been done to redress grievances, and

"The end of this Remonstrance is peace. Wee are accused to have don nothing, either for King or kingdome.

"If a parliament must make an appology, wee may show what wee have done without looking too far back.

"All is true and expressed modestly.

"Wee stand upon our liberties for the King's sake, lest hee should bee King of meane subjects, or wee subjects of a meane King."—*Notes of Long Parliament*, p. 121.

* Hist. Reb. b. i. The House resolved, on the motion of Serjeant Wilde, "that when they had declared what was the law of the land, it was a breach of their privileges that it should not be obeyed;" and this doctrine they applied even to their right to issue orders to raise troops in the King's name to fight against his person.

that the danger now was from popular usurpation, much more than from an extension of prerogative. Whatever opinion might be entertained of the King's sincerity or secret inclinations, the royal assent had actually been given to acts which, in a great measure, adapted the constitution to the actual circumstances of the country. And although there was a pestilent set of lawyers, who contended that acts of parliament limiting the prerogative were not binding, the same national energy which had extorted these acts would have been ready to defend them. He threw his weight into the royal scale, that it might not kick the beam. He says that his resolution was much strengthened by conversations he had about this time with some of the popular leaders who betrayed their antimonarchical views. "I do not think one man wise enough to govern us all," said Henry Martin,—and Fiennes, at this time a furious presbyterian, told him "that there were many who would encounter the worst extremities of civil war if the King should resist the abolition of episcopacy, for that there was a great number of good men who wished to lose their lives before they would ever submit to that government."*

It was upon a church question that he first split with his old friends. After the failure of the first attempt to exclude the Bishops from parliament, a Select Committee had reported, "That the legislative and judicial power of Bishops in the House of Peers is a great hinderance to the discharge of their spiritual functions, prejudicial to the Commonwealth, and fit to be taken away." Against a bill founded on this resolution, Hyde made an earnest speech, arguing that it went to change the whole frame and constitution of the kingdom, and of the parliament tself.

Lord Falkland defended it—according to Hyde—as the only expedient to save the church,—but he dealt by no means tenderly with the arguments of his friend against it, and boldly insisted that both on spiritual and civil considerations the Bishops ought to be excluded.

This encounter in debate did not interrupt their friendship. After the difference of opinion between them had for a short time extended to some matters of minor importance, it entirely vanished, and they continued ever after politically, as well as personally, united,—for there was now manifested a clear intention to upset the Church and the Monarchy.

The bill for excluding the Bishops from Parliament having passed the Commons, was followed by a bill "for the utter abolishing and taking away of all Archbishops, Bishops, their Chancellors and Commissioners, Deans and Chapters, Archdeacons, Prebendaries, Choristers and Canons, and other under Officers, out of the Church of England."† This Hyde strenuously opposed, but the second reading was carried by a majority of 139 to 108. When it got into a committee of the whole House,—by way of a manœuvre, that he might be silenced, he was placed in the chair; but he, considering

[MARCH, 1641.]

* Life, i. 92.

† 2 Parl. Hist. 725, 792, 814, 916.

counter-manœuvring pious in such a cause, tells us, that by dexterous management as Chairman, he was enabled greatly to obstruct it, and as it contained clauses for the new government of the Church, about which few were agreed, it had made but little progress when parliamentary proceedings were suspended by the King's journey into Scotland.*

Before then an event had taken place which had a powerful influence on the destiny of Hyde. He had held no intercourse with the Court, and there, till very lately, he had been regarded [Oct. 1641.] with great aversion. But one day, while the Episcopacy abolition bill was in Committee, he was informed by Mr. Percy, brother of the Earl of Northumberland, that the King desired to speak with him. He went, and the following is his account of the interview,—written, however, many years after. Charles told him "that he heard from all hands how much he was beholden to him, and that when all his servants in the house of Commons either neglected his service or could not appear usefully in it, he took all occasion to do him service; for which he thought fit to give him his own thanks, and to assure him that he would remember it to his advantage. The King took notice of his affection for the Church, for which he said he thanked him more than all the rest, which the other acknowledged with the duty that became him, and said that he was very happy that his Majesty was pleased with what he did; *but if he had commanded him to have withdrawn his affection and reverence for the Church, he would not have obeyed him, which his Majesty said, made him love him the better.* Then he discoursed of the passion of the House, and of the bill then brought in against Episcopacy, and asked him whether he thought they would be able to carry it? To which he answered, that he believed they could not; at least, that it would be very long first. 'Nay,' replied the King, 'if you will look to it, that they do not carry it before I go for Scotland, which will be when the armies are disbanded, I will undertake for the Church after that time.' 'Why, then,' said the other, 'by the grace of God, it will not be in much danger.' With which the King was well pleased, and dismissed him with very gracious expressions."†

Hyde was now a regular adherent to the royal cause, and if we forget the insincerity of Charles and the supposed necessity of imposing harder conditions for securing what had been obtained, we should be disposed severely to blame those who wished still further to humble the crown; but Hampden and Whitelock, who were attached to the constitution, and who at the opening of the parliament had hardly differed from any sentiment of Hyde and Falkland, remained unsatisfied; and

* While this committee was sitting, he continued on terms of great courtesy with the promoters of the bill. He says, "the House keeping those disorderly hours, and seldom rising till after four of the clock in the afternoon, they frequently importuned him to dine with them at Mr. Pym's lodging, which was at Sir Richard Manby's house, in a little court behind Westminster Hall, where he and Mr. Hampden, Sir Arthur Hazelrig, and two or three more upon a stock kept a table where they transacted much business, and invited thither those of whose conversion they had any hope."—It appears that Hyde often accepted the invitation.—*Life*, i. 80.

† Life, i. 93.

as they well knew the character of the King and the circumstances of the times, we must be slow to blame the course which they adopted. It led in the result to civil war; but if Charles had been allowed quietly to carry into effect his plans in Scotland, and with a well-supplied treasury to support an army in England,—all the bills to which he had recently assented might have been treated like the Petition of Right; he might have wreaked the vengeance which he certainly meditated upon the popular leaders; and he might finally have triumphed over the liberties of his country.

With a view to check the reaction which was very perceptible in the King's favour on his return from Scotland, the famous "Remonstrance" was moved,—recapitulating in harsh language all the errors of his reign, and all the grievances under which the people had laboured. This Hyde strenuously opposed as unnecessary and insulting, and it was carried only by a small majority.* A question then arose as to whether it should be published before it was communicated to the Lords; and he was in great danger of being sent to the Tower for having proposed, after the fashion of the Lords, to enter a protest against a resolution to that effect.

[Nov. 1641.]

He now wrote his maiden state paper in the royal cause, which was a manifesto in the King's name, in answer to the "Remonstrance." He says, that he first sketched it as an exercise without any thought of its being used; but showing it to some friends, it was carried to the King, who was highly pleased with it, and adopted it. The tone of it is certainly excellent, and if the composition be not quite pure, it is at any rate in better taste than the addresses of the parliament.

Falkland and Colepepper were now introduced into office as Secretary of State and Chancellor of the Exchequer, and the King again sending for Hyde told him, in the presence of the Queen, "that he was much beholden to him for many good services; and that now he had preferred two of his friends, it was time to give him some testimony of his favour, and therefore he had sent to him to tell him that he intended to make him his Solicitor-General in the place of him who had served him so ill."†—*Hyde*, "God forbid." —*King*, "Why, God forbid?"—*Hyde*, "Sire, it is my duty to advise your Majesty that it is by no means fit that at this time the other should be removed, and to assure your Majesty that if he were removed, I am in no degree fit to succeed him."

[Dec. 1641.]

The Queen, then, in a very complimentary manner, insisted on Hyde's great qualifications for the office; but he besought them to believe, "that although the present Solicitor-General will never do much service, he will be able to do much more mischief if he be removed." They then proposed another opening for him; but he tells us he assured them "he should be able to do much more service in the condition he was in."‡

Hyde thus for the present remained without any office; but a sort of

* 159 to 148. 2 Parl. Hist. 937, 942. † Oliver St. John. ‡ Life, i. 101.

inner cabinet was constituted, consisting of him, Falkland, and Colepepper,—whom the King desired to meet frequently to consult on his affairs,—to conduct them in parliament,—and to give him constant advice what he was to do,—solemnly pledging himself *that, without their consent, he would take no step in parliament whatever*."*

The three associates met nightly at Hyde's house, conferring on the events of the bygone day, and concerting measures for the morrow. To him was assigned the drawing of all papers which were to appear before the world against the proceedings of the parliament, and he likewise carried on a private correspondence with the King to inform him of their sentiments, and to keep him steady to his purpose.

Under this arrangement the royal cause visibly prospered; and the people, according to their natural levity and ingratitude, already forgetting the reforms which the parliament had achieved for them, were beginning to regard the leaders as men merely actuated by personal ambition,—when the King, being told by foolish courtiers and bed-chamber women that the moment had arrived for victory and vengeance, ordered Herbert, the Attorney-General, forthwith to go to the House of Lords, and to impeach Lord Kimbolton and the five members for high treason,—and he himself, in his own proper person, entered the House of Commons to arrest them with his own hand. [Jan. 4, 1642.]

We may judge of Hyde's consternation at the news of these proceedings, from his statement written years after, when indignation at the treachery of Charles, and contempt for his weakness, had been almost absorbed in pity for his misfortunes. "The three persons before named, without whose privity the King had promised that he would enter upon no counsel, were so much displeased and dejected, that they were inclined never more to take upon them the care of any thing to be transacted in the House, finding already that they could not avoid being looked upon as the authors of those counsels, to which they were so absolute strangers, and which they so perfectly detested; and, in truth, they had then withdrawn themselves from appearing often in the House but upon the abstracted consideration of their duty and conscience, and the present ill condition the King was in."†

It is creditable to Hyde that, without office or emolument, he continued on public grounds to serve a Sovereign in whom he could no longer place private confidence, at a time when difficulties were so rapidly accumulating round him. [Feb. 1642.] The parliament now openly assumed the functions of the executive government, by ordering out the train-bands, and issuing commands to the governors of fortresses. They even interfered with the management of the King's children; and Hyde was ordered, along with another member of the House of Commons and a Peer, to attend his Majesty and inform him of their wishes, that Prince Charles should not be removed from Hampton Court. The deputation found the King at Can-

* Life i. 102. † Hist. Reb. b. ii.

terbury on his return from Dover, where the Queen had embarked—after persuading him to assent to the "Bishops' Exclusion Bill." They were ordered "to attend him after he had supped, and they should receive their answer." Accordingly they were admitted at nine o'clock, and a sharp rebuke was read to them for their impertinence. In public, Hyde could only act and be treated as one of the deputies; but he contrived to have a private interview when the King was undressing for bed, and with great difficulty prevailed upon him to recall the answer, "which could produce no good, and might do hurt," and to desire the deputation to wait upon him at Greenwich to receive his final reply, although Charles still "enlarged with much sharpness upon the insolence of the message."

In the mean time Hyde, with the sanction of Falkland and Colepepper, framed a more moderate answer, which was adopted. Henceforward he was entirely in the King's confidence, and drew all the papers which were supposed by the Council even to be the King's own composition,—on a promise that the real authorship of them should be kept a profound secret. "His Majesty continued so firm in this resolution, that though the declarations from the Houses shortly after grew so voluminous, that the answers frequently contained five or six sheets of paper closely writ, his Majesty always transcribed them with his own hand, which sometimes took him up two or three days and a good part of the night, before he produced them to the Council, where they were first read, and then he burned the originals."*

Charles now withdrew from Whitehall, which he never again entered except as a prisoner, and, travelling towards the north, prepared for war. [March, 1642.] Hyde seems to have thought that he would have done better to have trusted to the general disgust which must soon have been produced by the violent encroachment of the parliament, if he had appeared to place confidence in the returning good sense and loyalty of the people. In a letter to Charles, he solemnly warned him against the counsels of violent men. Having mentioned the reports respecting his Majesty's "designs of immediate force," he decently says, "to none of which your servants give the least credit, assuring themselves that, however your affairs and conveniences have invited you to York, you intend to sit as quietly there as if you were at Whitehall. For your Majesty well knows that your greatest strength is in the hearts and affections of those persons who have been the severest assertors of the public liberties; and so, besides their duty and loyalty to your person, are in love with your inclinations to peace and justice, and value their own interests upon the preservation of your rights. These your Majesty will not lose by any act which may beget just fears in them. Neither can there be so cunning a way found out to assist those who wish not well to your Majesty (if any such there be), as by giving the least hint to your people that you

* Life, i. 119—125.

rely upon any thing but the strength of your laws and their obedience."*

The parliament saw the advantage which the King might have drawn from delay, and they hurried on their Ordinance about the militia, to which he could not consent, as, in violation [April, 1642.] of the first principles of the constitution, it transferred to them the power of the sword, and it virtually dethroned him. The King's declaration drawn by Hyde on rejecting this measure, is a masterly performance, and must have produced a considerable effect upon the public mind.†

Notwithstanding all the precautions which were used, there was a strong suspicion that the member for Saltash carried on a secret correspondence with the King, and a motion was [May, 1642.] planned for an inquiry "upon whose advice the King acted,"—to be followed up by an order for sending the offender to the Tower; but before this intention could be carried into effect, Hyde finally withdrew from the parliament. He received a letter from the King, expressing a wish that he should repair to York, "there being now urgent occasions for his immediate advice." Having come to an explanation with the Lord Keeper Littleton,‡ he obtained leave of absence for a few days upon a physician's written recommendation "that he should take the air of the country for his health."§ He first went to the house of a friend near Oxford, and there hearing of the escape of the Lord Keeper, he prosecuted his journey accompanied by Chillingworth. Travelling by unfrequented roads he safely reached Nastall, the residence of Sir John Worstenholme, about twenty miles from York. Here, where he had been expected, the King sent him the parliament's famous proclamation of the 26th of May, and required him to furnish a prompt reply, "that the poison might not work too long upon the minds of the people." Having performed this task, he kissed the King's hand at York, and from thence remained constantly near his person, till the disasters of the war caused their final separation.

Then came "the nineteen propositions"—more rigorous than those imposed by the Barons on Edward II. or on Richard II., by which were to be subjected to the control of parlia- [June, 1642.] ment the appointment of all privy councillors and ministers of state, the keeping of all forts and castles, the command of the militia, and the government, education, and marriage of the King's children;—the King was to consent to such a reformation of the church, government, and liturgy as both Houses shall advise;—every member of either House dismissed from office during the present parliament, was to be restored on the petition of the House of which he was a member;—the justice of parliament was to pass on all delinquents, notwithstanding the royal pardon;—Papist Peers were disqualified,—and no Peers made thereafter were to sit or vote in parliament till admitted thereunto

* Clar. State Pap. ii. 139.
† Rushworth, iv. 578—599. 2 Parl. Hist. 1201.
‡ Ante, Vol. II. Chap. LXVI. § Life, i. 136.

with the consent of both Houses.* The King's answer prepared by the three friends, powerful in reasoning and touching in sentiment, thus concluded:—"These being passed, we may be waited upon bareheaded, we may have our hand kissed, the style of Majesty continued to us, and the King's authority declared by both Houses of parliament may be still the style of your commands; we may have swords and maces carried before us, and please ourselves with the sight of a crown and a sceptre; but as to true and real power, we should remain but the outside, but the picture, but the sign of a King."†

Hyde now heartily concurred in the issuing of the Commissions of array,—in the declaration signed by a majority of the Peers and many of the northern gentry binding themselves to defend the King's person, crown, and dignity,—and in the proclamation requiring the aid of all the King's subjects north of Trent and within twenty miles southward thereof, for suppressing the rebels now marching against him. [July, 1642.] He was present, not disapproving, though with an aching heart, at the scene of erecting the royal standard at Nottingham, of which he has left us such a graphic description:—"The standard was erected at six of the clock in the evening of a very stormy and tempestuous day. [Aug. 22, 1642.] The King himself, with a small train, rode to the top of the Castle hill, Varney, the Knight Marshal, who was standard-bearer, carrying the standard, which was then erected in that place with little other ceremony than the sound of drums and trumpets. Melancholy men observed many ill presages about that time. There was not one regiment of foot yet brought thither, so that the train-bands which the sheriff had drawn together, were all the strength the King had for his person and the guard of the standard. There appeared no conflux of men in obedience to the proclamation. The arms and ammunition were not yet come from York, and a general sadness covered the whole town. The standard was blown down the same night it had been set up, by a very strong and unruly wind, and could not be fixed again in a day or two till the tempest was allayed."‡

To gain time a pacific message, prepared by Hyde, was sent by the King to the two Houses, and their intemperate rejection of it operated powerfully in his favour, and "levies of men and all other preparations for the war incredibly advanced." [Sept. 1642.] I do not find that any gentleman of the long robe took arms on the King's side in this memorable struggle, with the exception of Lord Keeper Littleton's volunteer corps at Oxford, and they probably would have met with little countenance from Prince Rupert and the cavalier officers. Hyde made himself useful by obtaining large supplies of plate to be coined into money from the two Universities, by raising loans for the King from persons of wealth in the midland counties, and by preceding the march of the army, and trying to induce the mayors of towns and other civil authorities to espouse the royal cause.

* 2 Parl. Hist. 1389. † Rush. iv. 728. ‡ Hist. Reb. b. v.

He was present at the battle of Edge Hill, but placed in the rear among the non-combatants,—the King's two sons, the Prince of Wales and the Duke of York, then boys [Oct. 22, 1642.] of twelve and nine years of age, being intrusted to his care. It is said that the day after the fight, when the King, notwithstanding his severe losses, might have marched to London, both Falkland and Hyde dissuaded him from this step, "not desiring to obtain that by a pure victory which they wished to be got by a dutiful submission upon modest, speedy, and peaceable terms."* But his approach to the metropolis would probably have roused a most dangerous resistance to him there, while the Earl of Essex would have hung upon his rear,—and he probably followed prudent advice in marching to Oxford, "the only city that he could say was certainly at his devotion."† Here he established and retained the seat of his civil government till the termination of the war.

Through the instrumentality of Hyde a negotiation was now opened with the parliament, and there was a very favourable prospect of a settlement; but it was suddenly terminated by the treacherous march of the King to Brentford,—after which "all thoughts of treaty were dashed; they who most desired it did not desire to be in the King's mercy; and they now believed, by his Majesty's making so much haste towards them after their offer of a treaty, that he meant to have surprised and taken vengeance of them without distinction."‡

The attempt at negotiation was resumed ineffectually during the winter, and in the spring both parties prepared actively for operations in the field. [A.D. 1643.] Now, at last, Hyde was installed in a responsible office. A letter from the King to the Queen had been intercepted and published by the parliament, in which, after expressing an intention to make Secretary Nicholas Master of the Wards, he adds, "And then I must make Ned Hyde Secretary of State, for the truth is, I can trust nobody else." The King having procured a printed copy of this letter, himself showed it to Hyde, and proposed immediately to carry the plan into effect. Hyde refused, unless with the full consent of Nicholas, who represented that the change would be disadvantageous to him. Luckily at this time the office of Master of the Rolls, which Colepepper greatly coveted, became vacant by the death of Sir Charles Cæsar. Colepepper willingly gave up his office of Chancellor of the Exchequer for the Rolls, of which he never enjoyed but the title, [Feb. 1643.] Speaker Lenthal being soon in possession of its jurisdictions and emoluments,—and Hyde was made Chancellor of the Exchequer, was sworn of the Privy Council, and received the honour of knighthood.

He exerted himself with great energy in his office, and was in hopes of a favourable issue to the contest—when the battle of Newbury was fought, [Sept. 20, 1643.] in which fell Lord Falkland,

* Sir P. Warwick's Mem. † Hist. Reb. b. vi.
‡ Hist. Reb. Passage suppressed in 1st edition.

"a loss," he says, "which no time will suffer to be forgotten, and no success or fortune could repair."*

The office of Secretary of State, now vacant by the untimely death of this distinguished man, was offered to Hyde, but he declined it in favour of Lord Digby, who, it was thought, might be more competent to conduct negotiations then pending with Harcourt, the French ambassador.

The Chancellor of the Exchequer was soon overwhelmed with grief by the decline of the royal cause—which he mainly ascribed to the misconduct of the royalists, both in the military and civil departments. "Those under the King's command grew insensibly unto all the havoc, disorder, and impiety with which they had reproached the rebels, and *they* into great discipline, diligence, and sobriety. Thus one side seemed to fight for monarchy with the weapons of confusion, and the other to destroy the King with all the principles of monarchy." He himself, notwithstanding his talents and services, was regarded with envy by ignorant, profligate, high-born cavaliers as an upstart. The recollection of the slights and indignities which he now suffered, afterwards drew from him these cutting observations:—"It were to be wished that persons of the greatest birth and fortune would take that care of themselves, by education, industry, literature, and a love of virtue, to surpass all other men in knowledge, and all other qualifications necessary for great actions, as far as they do in quality and titles: that Princes, out of them, might always choose men fit for all employments and high trust; which would exceedingly advance their service, where the reputation and respect of the person carries somewhat with it that facilitates the business. And it cannot well be expressed or comprehended by any who have not felt the weight and burden of the envy which naturally attends upon these promotions which seem to be *per saltum*, how great straights and difficulties such ministers are forced to wrestle with."†

About this time Hyde had to resist a bold measure, which the King at the suggestion of some hot-headed courtiers strongly urged,—to issue a proclamation for dissolving the parliament. His Majesty said, "that he thought there was too much honour done to those rebels at Westminster in all his declarations, therefore he knew no reason why he should not forbid them to sit, or meet any more there; he knew learned men of an opinion, that the act for the continuance of the parliament was void from the beginning, and that it is not in the power of the King to bar himself from dissolving it." The Chancellor of the Exchequer answered with irresistible force, "that not only the people in general, but those of his own party, and even of his Council, would take more umbrage upon such a step than upon any one particular that had happened

* Hist. Reb. iv. There is nothing in the writings of Clarendon which gives us so high an opinion of his head and his heart, as his character of Lord Falkland. The writer must have had high qualities himself who could so enthusiastically admire, so delicately discriminate, and so beautifully delineate the high qualities of another.—*Life*, i. 42—50.

† Hist. Reb. b. iv.

since the beginning of the war; that his forbidding them to meet at Westminster, would not make one man the less meet there; and that if he had power to dissolve this parliament on such grounds, he might likewise repeal all other acts made by this parliament, whereof some were very precious to the people; and that such a proclamation would confirm all the fears and jealousies which had been infused into them, and would trouble many of his own true subjects."

The noble historian insinuates, that this advice came from Herbert the Attorney-General, against whom he ever shows his grudge. After some conferences with Mr. Attorney, the scheme was abandoned.*

Hyde continued to struggle vigorously amidst all difficulties and discouragements, and in the hope of producing a scene where talent and merit might have the ascendency, he prevailed [JAN. 1644.] on the King to call a parliament at Oxford, as a rival to that at Westminster. He was now for a time in the important position of leader of the House of Commons, being decidedly the first in eloquence and a knowledge of parliamentary business of the 120 Commoners who assembled in Christ Church Hall. As Chancellor of the Exchequer he opened his budget, detailing the mischiefs which arose from raising money by unlawful means, and under the plea of warlike license; and showing the necessity for finding more regular methods for finding supplies to carry on the war. He did not, however, venture to propose that any tax should be formally imposed,—which might have speedily raised an awkward question as to the regularity and powers of this Oxford parliament, while another was sitting under a law to which the King had given his assent. He proposed, therefore, that, under the authority of the two Houses, as testified by letters to be signed by their respective Speakers, a contribution should be levied on the wealthy, with their own consent, in the nature of a property tax; and that the royalists should imitate the tax lately imposed by an ordinance of the two Westminster Houses, on wine, beer, and other articles of household consumption,—the origin of our excise.† These "ways and means" were agreed to, and produced a considerable supply.

The other great measure attempted by this Convention,—the opening a negotiation for peace, proved abortive,—the two Houses at Westminster refusing to receive any communication till they were recognised as a parliament,—and when they had been so recognised, complaining that "the persons now assembled at Oxford, who, contrary to their duty, had deserted the Parliament, were put on an equal footing with the two Houses convened according to the known and fundamental laws of the kingdom." This "little Senate," to which Hyde gave laws, concluded its session by a resolution, "that the Lords and Commons remaining at Westminster have rejected all offers of peace [MAR. 1644.] and treaty; and that for having made war against the King, counter-

* Life of Clarendon, i. 169.

† Both parliaments declared that this tax should only continue to the end of the war, and then be utterly abolished,—"which," adds Clarendon, "few wise men believed it would ever be."

feited the King's Great Seal, and abetted the Scotch invasion, they are guilty of high treason, and ought to be proceeded against as traitors to the King and kingdom."* The desire for peace and the jealousy about religion, manifested by some of the members, had given much uneasiness, and the prorogation was a great relief to the King, and still more to the Queen, who hated the very name of parliament.

During the campaign which followed, in which Prince Rupert once more, at Marston Moor, lost a great battle by his blind impetuosity, Hyde remained at Oxford trying in vain to establish some order and regularity in the administration of the King's affairs. He received a flattering mark of his importance, in being specially exempted from pardon in some new demands made by the parliament at Westminster, in the autumn of 1644.

In the beginning of the following year Hyde was the leading commissioner on the part of the King at the treaty of Uxbridge, [A. D. 1645.] the last time the two parties negotiated on any thing like equal terms,—subsequent events soon placing the King as a prisoner in the hands of his subjects. Seeing that there never would be another chance of pacification on the basis of preserving a limited monarchy, his exertions were now stupendous. "They that had been most inured to business had not in their lives ever undergone so great fatigue for twenty days together as at that treaty. The Commissioners seldom parted during that whole time till two or three o'clock in the morning. Besides, they were obliged to sit up later who were to prepare such papers as were directed for the next day, and to write letters to Oxford,"†—a task which fell chiefly on Hyde himself. He was particularly charged with the church question, and peremptorily refusing the entire abolition of episcopacy, he expressed a willingness to modify the church establishment, and disallow pluralities with cure of souls,—that the Bishop should keep constant residence in his diocese, and preach in some church within it every Sunday,—and that 100,000*l.* should be raised out of Bishops' lands for the public service.‡

On this and every other point the parliamentary Commissioners were inflexible, so that a constitutional settlement was impossible, and another trial of strength in the field was to determine whether England should fall under the sway of an absolute monarch or of a republic.

* Rush. v. 565. Ante. † Hist. Reb. b. v. ‡ Hist. Reb. b. v. Rush. v. 892.

CHAPTER LXXVI.

CONTINUATION OF LIFE OF LORD CLARENDON TILL HIS RETURN FROM THE EMBASSY TO MADRID.

Before the expected crisis arrived, Hyde's position was entirely altered. The King wished to remove Prince Charles, now a spoiled youth of fourteen, from the Court (as he said), "to unboy him," and the presence of some person of exalted rank was greatly wanted in the west of England, where Goring, Granville, and other royal generals were quarrelling for the command, and exposing themselves to great loss and discredit. An association of the gentry and yeomanry of the four western counties had petitioned that the Prince should be placed at their head, and notwithstanding his tender years he was invested with two commissions, one as General of all the King's forces in England, and another as Commander of the western association. But he was to be guided in every thing by a mixed council of military officers and civilians, and among the latter was Sir Edward Hyde, on whose prudence and attachment the King placed such reliance. Although he was still to retain his office of Chancellor of the Exchequer, he very little relished this new appointment, but he deemed it his duty to submit.* [Feb. 1645.]

On the 5th of March, 1645, the Prince and his adviser took leave of Charles, now fated to destruction, and neither of them ever saw him more. They journeyed on to Bristol, then a royal garrison, where they stayed a considerable time, while efforts were vainly made to allay the jealousies of the rival Generals. The council, at the suggestion of Hyde, wrote to the King proposing that the Prince should be recalled; but before an answer was received, news arrived of the disastrous defeat at Naseby, and there was no safety for the royal family in the centre of England. Fairfax advanced towards Bristol, and it was necessary to conduct the Prince further to the west. Had he remained, he must have been taken prisoner on the shameful surrender of that city by Prince Rupert. [June, 1645.]

The King, who had retreated into South Wales, now anxious for the safety of his son, summoned Hyde and Colepepper, who was likewise of the Prince's Council, to repair to him. The former was confined to his bed by illness, but the latter joined Charles at Brecknock, and brought back from him a mandate addressed [Sept. 1645.]

* Although the advice of such a discreet person as Clarendon was very desirable for the young Prince, I suspect that the real cause of his removal was the dislike entertained for him by the more violent cavaliers, and by the Queen, who considered him little better than a Roundhead. From this time he had no influence whatever in the general direction of the King's affairs.

to the Prince in these words: "My pleasure is, whensoever you find yourself in apparent danger of falling into the rebels' hands, that you convey yourself into France, and there to be under your mother's care, who is to have the absolute full power of your education in all things except religion." Hyde, who was always at enmity either openly or secretly with the Queen, and who on public grounds dreaded the consequences of her influence over her son, prevailed upon the Council to write a letter of expostulation, in which, while assuring the King that nothing should be omitted to save the Prince from falling into the hands of the parliament, they besought that a place of refuge might be left to their discretion, and that at all events Ireland or Scotland might be preferred to France. [March, 1646.] In the mean time, under colour of giving some directions as Chancellor of the Exchequer respecting the duty of customs, he went to Falmouth, and there secured a a vessel to be ready at any moment for the escape of the Prince and his attendants.

The King wrote back a peremptory order that the Prince "should quit the kingdom; that he should not go to Scotland or Ireland; that he should go if possible to Denmark, and if not thither, rather to France or Holland." There were no means of reaching Denmark, and from Holland the Prince would have been sure to be transferred to France and placed under the dominion of his mother, whereby a settlement of the nation would become impossible. Hyde and his colleagues, who now had the Prince in their care at Tavistock, addressed another remonstrance to the King, assuring him "that nothing but his commands should put the Prince in the power of the parliament, but also telling him how strongly the followers of the Prince were disinclined that he should quit the kingdom; that many who were faithful would rather see him in the hands of the enemy than in France; and that the Council must advise that he continue still within the King's dominions, but if occasion required they would transport him to Scilly or to Jersey." At Truro they received an answer by which Charles acquiesced in their views, but reiterated the command that the Prince should leave England whenever there was serious hazard of his being captured by the parliamentary forces.

The victorious Fairfax was now on the borders of Cornwall, and intelligence was received by the Council of a design to seize the Prince's person, [April, 1646.] "to which they had reason to believe that some of his own servants were not strangers."* They withdrew him to Pendennis Castle, but that was no safe asylum; for, on the 2d of March, they learned from fugitives that Fairfax had taken possession of Bodmin. That night, about ten o'clock, the Prince, attended by Hyde and others of his suite, embarked in the vessel that had been prepared for his escape, and in the afternoon of the second day arrived safely in Scilly. Here they found nothing but misery and destitution, and "Colepepper was sent into France to acquaint the Queen

* Hist. Reb. B. v.

with his Highness being at Scilly, with the wants and incommodities of the place, and to desire supply of men and moneys for the defence thereof, and the support of his own person."*

The Prince and his attendants remained in Scilly till the 16th of April, sometimes almost in a state of starvation, for they had only a scanty supply of provisions from Cornwall and from Normandy. They were likewise again in great danger of captivity. Lord Hopton, the King's brave but unfortunate general, who commanded the remnant of the royal army in the west, having been obliged to capitulate, an expedition was fitted out to pursue the Prince; a summons to surrender to the parliament was sent in; and a hostile fleet of above twenty sail was seen hovering round the island. Happily, a violent storm arose, during which no ship could keep the sea, and the immediate danger was over. As soon as the storm had subsided, [April 17, 1646.] the Prince and Hyde set sail for Jersey, where they arrived in safety.

The great struggle now was, whether the Prince should remain at Jersey, or cross over to France. The Queen resorted to every artifice to get him into her power; and knowing that Hyde would never consent to this, she sent him by Colepepper a crafty letter directed to him at Scilly, intimating the friendly disposition of the French Court, "if the Prince, in his way to Jersey, should be necessitated by contrary winds or the danger of the parliament shipping, to touch in France." Hyde caused representations to be made to her of the injury likely to arise to the King's affairs from the Prince going to reside in France,—assuring her that he was in perfect safety at Jersey; but she contrived to get from the uxorious King a written authority, signed with his own hand, empowering her to join his "positive commands" to hers that the Prince should repair to her immediately.†

After the King's flight from Oxford, and while between him, now a prisoner, and the victorious parliament, negotiations were pending which possibly might have led to a settlement, if [July, 1646.] confidence had been placed in his sincerity, (for higher terms were not asked than at Uxbridge),—Henrietta, with a certainty of offending every party in the state, and at the risk of raising the suspicion of a plot between the royalists and Cardinal Mazarine, sent over Lord Jermyn, her favourite, as the bearer of positive orders in her own name and the King's, that the Prince should forthwith join her at Paris. Hyde could detain him no longer, but refused to accompany him,—seeing that in France he himself must be utterly without power, or influence, or the capacity to render any service to the King, or the royal family, or his country. He prevailed on Lord Capel and Lord Hopton, two other members of the Council, who concurred in his views, to join him in a respectful letter to the King, justifying their conduct.

Now comes that period of Clarendon's life which to the vulgar eye appears disastrous, but to which chiefly he owes his celebrity. Had he

* Hist. Reb. B. v.

† Clar. Pap. ii. 230.

lived in quiet and prosperous times, had he been regularly promoted from being Attorney-General to the woolsack, and held the Great Seal till he died,—he might have been surrounded with luxury and flattery while he lived, he might have left titles and fortune to his family, and he might have been quoted in the Court of Chancery as a great Equity Judge,—but he would only have been high in the vulgar line of professional lawyers. Who would exchange the reputation of Clarendon for that of Guilford, or even of Nottingham or of Hardwicke?

He remained in this sequestered island above two years,—having entirely sacrificed his profession,—without office or employment,—without the occupation and excitement now afforded by parliamentary opposition to the leaders of a discomfited party,—even without the comforts and solaces of domestic life. But instead of indulging in despondence, or in idleness, or in frivolous amusements, he employed his time with well-directed industry and vigour, and he rendered his name immortal. Seeing that the struggle in which he had been engaged was the most important that ever had occurred in English history, and knowing that it must be interesting to all future generations of Englishmen, he had long resolved, for his own fair fame and for the benefit of his country, to become its historian. This purpose was strengthened as he saw the royal cause decline, from the apprehension that the domination of the opposite faction would taint the sources of historic truth. So intent had he become on his object that he began his great work the moment he set his foot on the rock of Scilly, and he seriously applied himself to it amidst the distractions and difficulties of his short and anxious sojourn there,—in danger if taken prisoner by the forces of the parliament of being brought to trial as a malignant,—and deeply occupied in counteracting the selfish plans of Queen Henrietta Maria, by which she was injuring the royal cause, and cutting off all hope of a happy settlement. Now released from other engrossing duties, he earnestly and devotedly applied himself to his great undertaking,—of which we can distinctly trace the progress as well as the commencement. He had with him original papers and memoranda which he had been some time collecting, and he taxed his memory with great anxiety respecting events which had come under his own observation. He endeavoured, by application in various quarters, to supply his deficiency of materials with respect to military operations and distant transactions. He wrote to Lord Witherington, the friend of the Marquis of Newcastle, entreating from both of them a narration of those affairs in which they had borne a part. From Lord Bristol he asked information respecting the treaty of Berwick, the Great Council of the Peers at York, and that nobleman's own commitment by the parliament. To Lord Digby he wrote:—"I pray let your secretaries collect all material passages concerning Ireland you may think fit to impart to me. I would be glad you would yourself collect as many particulars of Count Harcourt's negotiation in England, of Duke Hamilton's commitment, and of the Marquess of Montrose's managing in Scotland, and any other things you imagine conducing to my work." He had great reliance on Secre-

tary Nicholas, to whom he says, "you will by all your diligence, intercourse, and dexterity, procure me such materials for my History as you know necessary,—which I take to be so much your work that if I fail in it, I will put marginal notes into the History that shall reproach you for want of contribution. By your care I must be supplied with all the acts of countenance and confederacy which have passed from France, Holland, and Spain."

His application to Colepepper is particularly interesting, from the allusion to Falkland, and the confidence which the writer displays in his own powers. After asking him for his recollections of Edge Hill, he says, "The like care I expect from you concerning the siege of Gloucester, the raysing y[t] siege and retriete, the oversight there, the quick march after, and y[e] first battle of Newbury, where wee lost deare Falkland, *whom y[e] next age shall be taught to valew more than y[e] present did.*"

He thus communicated his intention to Charles I., now in the power of the parliament, but allowed considerable liberty of correspondence, and still treated with respect. "I flatter myself with an opinion that I am doing your Majesty some service in this island whilst I am preparing the story of your sufferings, that posterity may tremble at the reading of what the present age blushes not to execute." The King took the most lively interest in the work, and contributed a narrative of all important matters between the time when Hyde quitted Oxford to attend the prince in the West, and of the King's own escape to the Scottish camp. The expectation of farther assistance from the same quarter was disappointed, as we learn from a letter written from Hyde, in December, 1647, in which he says,—"Your Majesty's sudden remove from Hampton Court hath for the present taken away the opportunity of deriving those materials which your Majesty graciously intimated by Mr. Secretary Nicholas you intended for me, which renewed my courage when I was even ready to faint for want of some supply." But from Prince Charles he unexpectedly received useful memorials of the campaigns of Prince Rupert.

He devoted not less than ten hours a day to his work,—being generally employed three hours a day in writing, and the rest of his time in examining authorities and collating materials. From the unspeakable advantage of having a great and worthy object to pursue, he not only escaped the tedium which must otherwise have devoured him; but, with much to mortify and alarm him, he preserved equanimity and even cheerfulness. He thus describes his course of life at Jersey, till he was left in entire solitude: "Whilst the Lords Capel and Hopton stayed there, they lived and kept house together in St. Hilary's, which is the chief town of the island, where, having a chaplain of their own, they had prayers every day in the church at 11 of the clock in the morning; till which hour they enjoyed themselves in their chambers, according as they thought fit, the CHANCELLOR* betaking himself to

* Our historian shows his fondness for pompous appellations, (for which he was ridiculed,) by thus always designating himself when he was in exile in Jersey, h—

the continuance of the history which he had begun in Scilly, and spending most of his time at that exercise. The other two walked or rode abroad or read, as they were disposed: but at the hour of prayers they always met, and then dined together at the Lord Hopton's lodgings, which was the best house, they being lodged at several houses with convenience enough. Their table was maintained at their joint expense —only for dinners, they never using to sup, but met always upon the sands in the evening to walk, after going to the castle to Sir George Carteret, who treated them with extraordinary kindness and civility."*

After a few months he was deprived of the society of his friends,—[SEPT. 1646.] Lord Capel leaving Jersey for Holland, and Lord Hopton for Normandy, with a view to their return to England. He was too obnoxious to the parliament to venture to put himself in its power, and he was too poor to send for his wife and children, who were sheltered by relations in Wiltshire. Speaking of Lady Hyde at this time, he says, "She bears her part with miraculous constancy and courage, which truly is an unspeakable comfort to me."†

He now left the town of St. Hilary's, and, under the protection of [A. D. 1647.] Carteret, constructed for himself some convenient rooms among the ruins of an old castle, and over his door he set up his arms with this inscription, "Bene vixit qui bene latuit."

Like most authors, he was occasionally discouraged by the difficulties he met with, saying that he wished he had never begun the work, and that he was determined to lay it aside,—but it made steady progress, and in seven months he got as far as the erecting of the royal standard at Nottingham. To tune his mind to historical composition, and to improve his taste, he read over Livy and Tacitus, and almost all the works of Cicero. He likewise availed himself of the opportunity of improving himself in the French language, which he had hitherto neglected.

His studies were interrupted, first by a report that Lord Jermyn, the Queen's favourite, had engaged to deliver up Jersey and Guernsey to the French for a sum of money, rather than submit to which he patriotically agreed with Carteret that they would call in the assistance of the parliament,—and afterwards, by the preparations of the parliament forcibly to reduce these islands to subjection, which alarmed him so much for his personal safety, that he made his will, wrote a most tender letter to his wife, to be delivered to her when he should be no more, and gave directions respecting his papers and the publication of his "History of the Rebellion."

But all these dangers passed over, and he remained unmolested in his [A. D. 1648.] retreat at Jersey till the month of June, 1648. Early in that year he had received the King's commands by Lord Capel that he should attend the Prince whenever required by the Queen,

cause he had been once Chancellor of the Exchequer to Charles I. when there was no revenue to look after.

* Life, i. 239. † Clar. Pap. ii. 310.

and the King had directed the Queen to summon him as soon as the Prince, according to a plan agreed upon, was to quit France. In May a letter came to him from the Queen, requiring him to wait upon the Prince at Paris on a day then gone by. He immediately looked out for the means of safe transport, and bidding adieu to the island where he had spent his time so creditably, so usefully, and so agreeably, he crossed over to Dieppe, and proceeding to Rouen, he there found his old colleagues, Lord Bristol, Lord Cottington, and Secretary Nicholas, who had received similar orders.

A little before this, seventeen sail of English ships of war, lying in the Thames, under a fit of returning loyalty, had declared against the parliament, and, displacing their Admiral, had sailed to Holland; and the Prince of Wales, posting to Calais, had embarked there to join them, and had been acknowledged as their commander. Hyde and Cottington, receiving this intelligence, hastened back to Dieppe. Here they found a French frigate, which conducted them to Dunkirk, where they heard that the Prince with the fleet had entered the river Thames, in hopes of exciting a popular movement in favour of his family. They were eager to participate in this enterprise, and Marshal Ranzau, the Spanish Governor of Dunkirk, furnished them with a vessel to carry them across to the coast of England. Unluckily, they were becalmed and boarded by pirates from Ostend, who, though pretending to have a commission from the King of Spain, "observed no rules or laws of nations." They stripped and rifled the passengers, taking from Lord Cottington to the value of 1000*l.*, and from Hyde 200*l.* in money, and all his clothes and linen, and then carried them prisoners to Ostend.

The two Englishmen, being set at liberty, complained to the law for redress, and they were surprised as well as irritated to find that no effectual steps were taken to arrest the malefactors or restore their stolen property, till they heard that the piratical ships were the private property of the Governor and magistrates of Ostend, who had divided the spoil. They were obliged to be satisfied with 100 pistoles to discharge the debts they had contracted in the town, and to carry them on their journey. The Prince's naval expedition had failed, and being obliged to retire before the fleet of the parliament, commanded by the Earl of Warwick, he was then in Holland. Hyde rejoined him at the Hague.

[SEPT. 1648.]

Now arose those bickerings in the exiled Court to which we have referred in the Life of Lord Keeper Herbert, who is so strongly charged by Hyde with having fomented and continued them.* A temporary calm was produced by the astounding intelligence of the execution of Charles I.,—by the exiles formally acknowledging Charles II. as his successor,—and by the ceremony of swearing in the old Councillors, with the addition of Secretary Long, of the Privy Council to the new Sovereign. But Hyde soon after had great difficulty in preventing a duel between Lord Cottington and Prince Rupert. He

[A. D. 1649.]

* Ante, p. 107, *et seq.*

himself had a violent altercation with the Earl of Lauderdale, who would only agree to receive Charles as King in Scotland, on condition of all enemies to the covenant being left behind,—and he was rendered unhappy by the apprehension of the Great Seal being given to Herbert, whose abilities and services he justly considered much inferior to his own, but whose pretensions were supported by Prince Rupert and others, on the ground of his high birth,—of his having filled the office of Attorney-General,—and of his great professional practice and experience. The heart-burning on this subject was allayed for a time by an injunction from the Queen mother, to which her son promised obedience, that no new appointment to any state office should take place for the present, nor till she should give her consent.

The murder of Dorislaus, the ambassador of the parliament at the Hague, having greatly alienated the States of Holland from the cavalier cause, and Cardinal Mazarine beginning to fear and to court Cromwell, —the only foreign country from which aid could now be expected was Spain. Lord Cottington had been ambassador there before he was made Lord High Treasurer, and, from his knowledge of the Court of Madrid, where republican principles were held in great abhorrence, he held out a hope of powerful assistance from that quarter to effect the King's restoration,—particularly through the instrumentality of the Irish Roman Catholics, of whom there was a large number in the Spanish service. He offered himself to undertake the mission, if Hyde would accompany him as his colleague. Little could rationally be expected in such a service except mortification and danger; but Hyde did not feel that he was at liberty to decline it, and he could not be more wretched, or more useless than in his attendance upon Charles in his wanderings. "In the end he told the Lord Cottington that he would only be passive in this point, and refer it entirely to him, if he thought fit, to dispose the King to like it; and if the King approved it, and commended it as a thing he thought for his service, he would submit to his command."

Charles approving, "soon afterwards publicly declared his resolution to send the Lord Cottington and the Chancellor of the Exchequer his ambassadors extraordinary into Spain, and commanded them to prepare their own commission and instructions, and to begin their journey as soon as was possible."

[May, 1649.]

Their secret instructions were to press for the recognition of Charles as the legitimate King of England; to try to effect a league offensive and defensive between him and the King of Spain; to raise a loan, for which security was to be given under the Great Seal of England, in any fashion that might be desired; and that, by way of concession, they should give assurances of the King's resolutions of grace and favour towards his Catholic subjects, and that they should offer all manner of civilities to the Pope's nuncio at Madrid.

Hyde left the Hague in the end of May, and spent nearly two years in this mission, which turned out to be the most harassing and unprofitable portion of his life. After settling his wife and family at Antwerp, visiting the Archduke and the Duke of Lorraine at Brussels, and with

difficulty raising a small supply of money to defray the necessary expense of his journey, he visited Charles at St. Germain's, and his mother at Paris, and tried to make peace between them. At last he reached St. Sebastian's, on the Spanish frontier. [OCT. 1649.] Here Cottington and he met with their first rebuff, for the Coregidor showed them a letter from the Secretary of State at Madrid, ordering, that when "the ambassadors of the Prince of Wales" should arrive, there they should be received with all respect; but they should be instructed not to proceed till the King of Spain's farther pleasure was made known to them, and in the passports handed to them they were designated as "ambassadors of the Prince of Wales." They despatched a remonstrance to Don Louis de Haro, the Spanish minister,—desiring to know if their coming was unacceptable to his Catholic Majesty,—in which case they would immediately return,—and desiring that, if they were received, it might be in such a manner as was due to the King they represented. An answer arrived, imputing the designed insult to the negligence of a Secretary, and assuring them of a good welcome from the Spanish King. But on their arrival at Alcavendas, three leagues from Madrid, they found that no preparations were made for their reception, and that the Spanish Court wished them heartily at a distance—beginning to entertain apprehensions of the displeasure of the English parliament. To avoid proclaiming to all Europe the ill usage they experienced by now retreating, they privately entered Madrid, and, preserving their *incognito*, took up their residence at the house of an English merchant well affected to their cause. On a fresh representation to the minister a formal reception was promised, and in the mean time they were invited to tournaments and bull-fights, where places of honour were assigned to them.

Intelligence arrived at Madrid that the parliament was becoming unpopular and weak, and the promised reception was accorded to the royalist ambassadors. "The King* slightly moved his hat and bid them cover." Their credentials being delivered, [A. D. 1650.] "he expressed," says Clarendon, "a very tender sense of our King's condition, and acknowledged that it concerned all Kings to join together for the punishment of such an impious rebellion and parricide; and, if his own affairs would permit, he would be the first to undertake it; but that they could not but know how full his hands were, and whilst he had so powerful an enemy to contend with he could hardly defend himself; but that when there should be a peace with France (which he desired), the King, his *sobrino* (for so he called the King his nephew), should find all he could expect from him; in the mean time he would be ready to do all that was in his power towards his assistance and maintenance."†

But the dread of Cromwell, to whom Europe now began to look, as the person who would terminate the troubles in England by military despotism, prevented any further notice being taken of them—till Ru-

* Philip IV. † Hist. Reb. b. vi.

pert, with his fleet, appeared upon the coast of Spain, and despatched a letter to Hyde, desiring him to obtain from the Court of Madrid "good reception for his vessels in any Spanish port they might have occasion to enter." The character of this unscrupulous warrior indicated immédiate danger, and letters were despatched that very night conveying the required directions to the Governors of all Spanish ports on the ocean and within the straits, "with as many friendly clauses as could have been inserted if the King had been in possession of his whole empire;—so great an influence a little appearance of power had upon their spirits: and the ambassadors found they lived in another kind of air than they had done; and received every day visits from the Court and from those in authority."

But Hyde and his colleague, before long, found themselves again neglected, by reason of a storm which did great damage to Prince Rupert's fleet, and the arrival on the coast of Spain of a more powerful fleet of the parliament, the commander of which menacingly warned the Spanish government, "that he knew well how to do himself right for any injury or discourtesy they might sanction." Not only were orders issued to receive his ships with all hospitality, but he received a valuable ring from the King as a propitiatory offering.

Hyde and Cottington soon after got into still greater disgrace by [May, 1650.] the assassination at Madrid of Ascham, the diplomatic agent of the Commonwealth. "They immediately sent a letter to Don Louis de Haro to express the sense they had of this unfortunate rash action, of which they hoped he did believe if they had any notice or suspicion they would have prevented it."*

Although Don Louis disclaimed a belief so injurious, suspicion fell upon them, as they had warmly protested against Ascham's reception, and one of his assassins was in their service. However, there seems no reason to believe that Hyde was at all privy to the affair. In a letter to Secretary Nicholas he said, "This accident hath been very unfortunate to our business, concerning which we were promised to have positive resolutions within a few days, but we must now sit still, without pressing them, till this matter be concluded; there having not wanted some malicious spirits here, which would beget an opinion that we were privy to this mad action, when, God knows, we knew not of the man's being come to the town till we heard that he was dead."†

They were again courted, and fêted, and fed with fine promises on news arriving that Charles II. had been received and recognised as King of Scotland,—the Spaniards not being aware of the insecurity of his tenure of power there, and not understanding what was meant by his having been obliged to deplore the wickedness of his father, and to de-

* Hist. Reb. b. vi.

† Clar. Pap. iii. 21. It is curious to consider that during the heat of the civil war there was not a single assassination in England; but that when it was over, the recollection of it caused several assassinations on the Continent by Englishmen of the cavalier party, as that of Dorislaus in Holland, of Ascham in Spain, of Lisle in Switzerland, &c.

clare that, "detesting prelacy, he would henceforth have neither friends nor enemies but such as were the friends or enemies of the COVENANT." But a despatch from Cardenas, the Spanish resident in London, announcing to his government the decisive victory gained by Cromwell at Dunbar, by which Scotland was conquered, proved the final ruin of all the hopes of Hyde and Cottington at Madrid. They had received instructions from Charles to protract their stay, [A. D. 1651.] and they tried to make it appear that this defeat would advance his cause in England; but the Spanish government placed no faith in this explanation, and after many hints that their continued attendance was unwelcome and fruitless, they at last received a formal message in the name of King Philip, "that they had received answers to all they had proposed, and were at liberty to depart, which his Catholic Majesty desired they would do, since their presence in the Court would be prejudicial to his affairs." They demanded and obtained an interview with Don Louis de Haro, but instead of being swayed by their remonstrances, "he pressed them very plainly, and without any regard to the season of the year, it being toward the end of January, to use all possible expedition for their departure, as a thing that even in that respect did exceedingly concern the service of the King." A day even was fixed by the Spanish government for their audience of leave.

It is a striking fact, that at no Court in Europe was much sympathy exhibited for the Stuarts, and in the middle of the 17th century there was no such coalition of Sovereigns in support of royalty as was witnessed at the conclusion of the 18th century, when a republic was about to be established in France. On the Continent, the contagion of republican principles does not seem to have been at all dreaded, and the English nation, being left to the entire management of their own affairs, —first the parliament, and then Cromwell, were cordially admitted into the community of European governments.

Thus terminated Hyde's most irksome residence of fifteen months at Madrid. Besides the diplomatic disappointments he encountered, his pecuniary resources were so low, that he often found the greatest difficulty in providing for the personal wants of himself, and his wife and children left destitute in a distant land. "All our money is gone," he writes, "and let me never prosper if I know or can imagine how we can get bread a month longer."* Again, "Greater necessities are hardly felt by any men than we for the present undergo,—such as have almost made me foolish; I have not for my life been able to supply the miserable distresses of my poor wife."†

But Hyde found consolation in that love of study which was his best friend throughout his chequered life. His history was suspended for want of materials, but he now assiduously cultivated the Spanish language, initiated himself in Spanish literature, and made himself familiar with Spanish laws and customs.‡ He also here composed a devo-

* Jan. 6, 1650. † Aug. 16, 1650.

‡ He must surely now have read Don Quixote in the original, but he says only that "he made a collection of and read many of the best books which are extant in

tional work, entitled "Contemplations and Reflections upon the Psalms of David, applied to the Troubles of this Time."

He had soon the affliction of losing the society of his colleague Lord Cottington, who having no wife or children to return to, being worn down by age and infirmity, being reconciled to the Roman Catholic church in which he had been educated, and sickening at the thought of being again plunged into the civil and religious distractions of his native country, resolved to spend the remainder of his days in Spain, and obtained permission from the Spanish government to reside in a private capacity at Valadolid.*

Hyde accordingly had his audience of leave as sole ambassador. [March, 1651.] He had conducted himself during his residence at Madrid so decorously, so inoffensively, and, notwithstanding his narrow circumstances, with so much dignity, that he had made a very favourable impression upon the Spaniards, which now showed itself in spite of the usual selfish and timid policy of the Court. "Hearing that he intended to repair to his family at Antwerp, and stay there till he received other orders from the King his master, they gave him all despatches thither that might be of use to him in those parts. The King of Spain himself used many gracious expressions to him at his last audience, and sent afterwards to him a letter for the Archduke Leopold, in which he expressed the good opinion he had of the ambassador, and commanded that whilst he should choose to reside in those parts under his government, he should receive all respect and enjoy all privileges as an ambassador: all which ceremonies, though they cost him nothing, were of real benefit and advantage to him, for besides the treatment he received from the Archduke himself in Brussels, as ambassador, such directions or recommendations were sent to the magistrates of Antwerp, that he enjoyed the privilege of his chapel, and all the English, who were numerous in that city, repaired thither with all freedom for their devotion; which liberty had never before been granted to any man there."†

that language, especially the histories of their civil and ecclesiastical polity," and I do not trace in his writings any allusion to Cervantes. He does not appear to have had any taste for what we call *light reading*; if he had, his history might have been a little less *weighty*.

* He died there the following year in his 77th year.

† Hist. Reb. b. v.

CHAPTER LXXVII.

CONTINUATION OF THE LIFE OF CLARENDON TILL THE GREAT SEAL WAS DELIVERED TO HIM AT BRUGES.

Hyde left Madrid in March, 1651, and after a fatiguing journey, performed chiefly on mules, reached Paris. Here he was received more graciously than usual by Queen Henrietta, who was in a state of great anxiety from the perils to which her son was exposed in Scotland. The ex-ambassador then travelled on to Antwerp, [June, 1651.] where he had, for some months, the exquisite enjoyment of living quietly in the bosom of his family, although disturbed by the sad news of the battle of Worcester, and under long suspense respecting the fate of his young sovereign. At last, news came of Charles's miraculous escape and safe arrival in Normandy. Hyde soon received a summons to repair to Paris, and on Christmas-day, 1651, again took up his residence there as a member of the exiled Court. All the former enmities, and jealousies, and rivalries, between the titular ministers now broke out with fresh violence, the Queen recklessly inflaming and exasperating them in her efforts to gain an ascendency for herself. She was at the head of one party, and Hyde of another. [A.D. 1652.] To strengthen herself, she tried to introduce Sir John Berkeley into the Council, and to have him appointed "Master of the Wards," an office depending upon the oppressive military tenures which the parliament had abolished, and to the abolition of which the late King, at several conferences, had readily agreed. Hyde urged "that the King could not, at the time, do a more ungracious thing, that would lose him more the hearts and affections of the nobility and gentry of England, than in making a *Master of the Wards* in a time when it would not be the least advantage to his Majesty or the officer; to declare that he resolved to insist upon that part of his prerogative which his father had consented to part with." This opposition succeeded, but rendered the Queen still more hostile to Hyde.

In the next controversy between them, I must say it seems to me that he was decidedly wrong, and that he displayed those narrow-minded and bigoted principles, as an ultra-high-church Episcopalian, which subsequently betrayed him into serious errors, and even a sacrifice of good faith. The French government, becoming more and more intolerant, would not suffer any English strangers to have a place of worship in Paris according to the rites and ceremonies of the Church of England; but at Charenton, in the suburbs, there was a Huguenot chapel, where, the edict of Nantes not being yet repealed, the Protestant service was celebrated according to law, and a most pious and

learned divine ministered to a most respectable congregation. The Queen declaring that, notwithstanding her zeal for her own religion, she respected the dying injunctions of her late husband, and was contented that her son should remain a Protestant, consented to his going to this chapel, as he could not be present at the celebration of mass, and there was no other place of public worship for him to attend. In answer to Hyde's opposition, she observed "that Queen Elizabeth had greatly favoured the Huguenots; that they were recognised as a reformed church; and that their pastors had been admitted into the Church of England without fresh ordination." But Hyde, who heartily disliked the Roman Catholics, but much more any Protestant church that did not rigidly adhere to the "Apostolic succession," declared with great earnestness, "that whatever countenance or favour the Crown or Church of England had heretofore shown to these congregations, it was in a time when they carried themselves with modesty towards both; but that, of late, some of their preachers had countenanced the doctrine that it might be lawful to resist a King by arms, and had even inveighed against Episcopacy; that the Queen, whose ulterior object was the conversion of her son to Popery, intended to unsettle his faith, and weaken his attachment to the only true reformed church, when he would be more accessible to her persuasions; and that, from the King's going to Charenton, it would be concluded everywhere that he thought the Episcopalian profession and Presbyterian profession were indifferent, which would be one of the most deadly wounds to the Church of England which it had yet suffered."

This matter being debated in Council, Charles, who was delighted to be entirely exempted from the restraint of attending public worship, said with affected gravity (having probably first cast a sly look at Buckingham), "that upon the whole he thought the arguments of the Chancellor of the Exchequer preponderated, and that, out of respect for that true apostolical church to the safety of which his blessed father died a martyr, he would not frequent the heretical conventicle at Charenton."* He was thus at liberty, without any interruption, to devote himself on Sundays to Miss Lucy Walters and other ladies of the same stamp, in whose society he now spent almost the whole of his time.†

Plunged in the gaieties of Paris, he forgot the misfortunes of his family, and lost sight of his three kingdoms, content if, from any source, he could be supplied with money to defray his personal expenses.

* Hist. Reb. b. vi. Life of Clarendon. (L. C.) 94.

† A sincere friend to the Church of England, I cannot conceal my disapprobation of this horror of entering a Presbyterian place of worship, which we still occasionally meet with in the High Church party,—which induced Hyde to advise that Charles should rather live like a heathen, than attend public worship in a French Protestant chapel, and made Dr. Johnson say, when in Scotland, that he would not go to hear Principal Robertson preach, unless he should take a tree for his pulpit. The only arguments to support such intolerance place those who use them at the mercy of the Romanists, to whom, perhaps, they would be glad to be reunited. Very different is the conduct of our beloved sovereign Queen Victoria, who, when in Scotland, attends divine service in the church of the parish in which for the time she is residing.

Hyde often gave him excellent general advice, which he received with good humour, and neglected,—and all that he would promise with regard to business was, "that a part of every Friday (*a day of penance*) he would employ in reading and answering letters on public affairs." But the number and publicity of his amours at last caused general scandal among his followers, and was reported to his disadvantage in England. His character particularly suffered from the utter worthlessness of Lucy Walters, who by her arts had won his affections, who by her influence continued to exercise a great control over his easy temper, and who was now the mother of a child, afterwards the celebrated Duke of Monmouth. Hyde, assisted by Ormond, interfered to dissolve this disgraceful connexion, and representing to Charles the injury which it did to the royal cause at home, where the appearances at least of morality were so highly respected, they prevailed upon him to separate from her, and as he still renewed his intercourse with her, they induced her by an annuity of 400*l.*, to repair with her child to her native country. When she arrived there she called herself Charles's wife, and Cromwell after keeping her some time in the Tower, sent her back to Paris. But Hyde had little more trouble with her, for her open lewdness was such as to forfeit the royal favour, and she soon after died disgracefully. Her son had been taken from her and placed under the care of the *Oratoriens* at Paris.*

A plan was now brought forward by a party in the exiled Court, to marry the King and the Duke of York to Mademoiselle d'Orléans and Mademoiselle de Longueville,—alliances which, from the ladies being Roman Catholics, would have caused great dissatisfaction in England, and might seriously have obstructed the restoration of the royal family. This was successfully opposed by Hyde; but he wisely supported the proposal, that the younger brother should serve in the French army, and honourably employ himself in seeking military experience under the great Turenne.

In proportion as Cromwell gained an ascendency in the Continental Courts as well as at home, and the royal party was isolated in the apartments of the Louvre assigned to them, Hyde's difficulties increased —from their want of real business. "It is hard," he says in a spirit of good-natured sarcasm, "for people who have nothing to do, to forbear doing something which they ought not to do. Whilst there are Courts in the world, emulation and ambition will be inseparable from them; and Kings who have nothing to give shall be pressed to promise. Men who would not have had the presumption to have asked the same thing if the King had been in England, thought it very justifiable to demand it, because he was not there, since there were so many hazards that they should never live to enjoy what he promised."† Upon Hyde was thrown, the unpopular task of refusing these solicitations, for in the illness and absence of Secretary Nicholas, he was now considered the acting and sole Secretary of State.

* 2 Clar. Pap. iii. 180. Thurloe, v. 169, 178.

† Hist. Reb. b. vi.

As Chancellor of the Exchequer devolved upon him the duty of attending to the scanty finances of the impoverished King. A great revenue had been expected from the prizes to be made by the fleet under the orders of Prince Rupert; but he returned from his buccaneering expedition to the West Indies, bringing in an account by which he made the King his debtor, and nothing was now to be expected from this quarter except a trifle by the sale of the decayed ships and their guns and stores.

In a letter written to Sir Richard Brown, in August 1652, Hyde says, "A sum lately received at Paris for the King is all he hath received since he came hither, and doth not enable his cooks and backstairs men to go on in providing his diet, but they protest they can undertake it no longer." The deficit increased. In the end of this year, the Finance Minister writes, "the King is reduced to greater distress than you can believe or imagine;" and in the summer of the following year, he thus describes the state of the treasury:—"I do not know that any man is yet dead for want of bread, which really I wonder at. I am sure the King himself owes for all he has eaten since April; and I am not acquainted with one servant of his who hath a pistole in his pocket. Five or six of us eat together one meal a day for a pistole a week; but all of us owe for God knows how many weeks to the poor woman that feeds us."*

This may seem the language of *badinage;* but to other correspondents he writes in a strain which proves that his own personal sufferings from poverty were most severe. "At this time I have neither clothes nor fire to preserve me from the sharpness of the season."† "I am so cold, that I am scarce able to hold my pen, and have not three sous in the world to buy a faggot."‡ "I have not been master of a crown these many months, am cold for want of clothes and fire, and owe for all the meat I have eaten these three months, and to a poor woman who is no longer able to trust; and my poor family at Antwerp (which breaks my heart) is in as sad a state as I am."§ "I owe so much money here to all sorts of people, that I would not wonder if I were cast into prison to-morrow; and if the King should remove, as I hope he will shortly have occasion to do, and not enable me to pay the debt I have contracted for his service, I must look for that portion, and starve there."‖

His new honour of foreign Secretary added greatly to his embarrassments, as the letters for his Government were all directed to him. "I cannot," he says, "avoid the constant expense of seven or eight livres the week for postage of letters, which I borrow scandalously out of my friends' pockets, or else my letters must more scandalously remain still at the post-house: and I am sure that all those which concern my own private affairs would be received for ten sous a week; so that all the

* Clar. Pap. iii. 174. † Nov. 9, 1652. ‡ Clar. Pap. iii. 126.
§ Clar. Pap. iii. 124. ‖ Ibid. iii. 164.

rest are for the King, from whom I have not received one penny since I came hither."*

He bore up nobly amidst all these embarrassments. In a frame of mind firm, cheerful, and resigned, he thus writes to Nicholas:—"Keep up your spirits, and take heed of sinking under that burden you never kneeled to take up. Our innocence begets our cheerfulness; and that again will be a means to secure the other. Whoever grows too weary and impatient of the condition he is in, will too impatiently project to get out of it; and that, by degrees, will shake, or baffle, or delude his innocence. We have no reason to blush for the poverty which is not brought upon us by our own faults. As long as it pleases God to give me health, (which, I thank him, I have in a very great measure,) I shall think he intends I shall outlive all these sufferings; and when he sends sickness I shall (I hope with the same submission) believe, that he intends to remove me from greater calamities."†

But all these sufferings were light compared to the tortures which he felt from the promotion of Herbert, the late Attorney-General, to be Lord Keeper. [A. D. 1653.] This individual, as we have before explained in his Life, was made an instrument in the hands of Hyde's enemies to mortify and depress him.‡ "The Queen's displeasure grew so notorious against him, that after he found, by degrees, that she would not speak to him, nor take any notice of him when she saw him, he forbore at last coming into her presence, and for many months did not see her face, though he had the honour to lodge in the same house, the Palace Royal,§ where their Majesties kept their Courts."‖ But she had ample vengeance when she had prevailed upon her son, on specious pretexts, to deliver the Great Seal to Herbert,—which Hyde, notwithstanding all his awkward attempts at seeming indifference, evidently considered the greatest misfortune which had ever befallen him.

The new Lord Keeper by no means bore his faculties meekly; and, not contented with parading his rank and precedence, he entered into cabals for the utter ruin of his rival. But these terminated in his own discomfiture, and after holding the Great Seal little more than a year, he was deprived of it, and consigned to a premature grave.¶

Hyde cleared himself satisfactorily of the charge of having had an interview in England with Cromwell, and of having received a pension from him for secret information, as well [A. D. 1654.] as of having spoken slanderous words of the King, and he wrote pleasantly to his friends: "I hope you think it strange to hear that I have been in England, and have had private conference with Cromwell:" "It seems I was in England at the time you were at Antwerp, and I

* The Queen could not be blamed for not assisting her son with money; for it is related that about this time she was obliged to keep her daughter Henrietta all day in bed during a severe frost, because she had not money to buy fuel to light a fire to warm her.

† Clar. Pap. ii. 310. ‡ Ante, p. 107. § Palais Royal.

‖ Hist. Reb. b. vii. ¶ See Life of Lord Keeper Herbert, *ante*, p. 110.

believe upon examination you will be found to have been there with me. Of the pension I heard not till lately. My comfort is, that I do not know that any such little stratagems do make impression upon any worthy person."*

From the great influence of the Queen, and the ill offices of other enemies, and the levity of the King, Hyde had been in great danger of being discarded, and of being driven either to sue for pardon to Cromwell, or to die of chagrin and misery in exile. The year ending in June, 1654, was the most unhappy he had ever passed. But he was recompensed by seeing the Great Seal again in the King's own custody, and certainly knowing that when the Court were to move into the Low Countries, "Ex-Lord Keeper Herbert" was to be left behind at Paris.

While Charles was making this journey, Hyde had leave of absence to visit his family now stationed at Breda. Before quitting Paris,—on the suggestion of Charles, he asked and he obtained an audience of leave from his old enemy, the Queen. She charged him with disrespect, saying, "that all men took notice that he never came where she was, though he lodged under her roof." He replied,—"Madam, your Majesty mentions my punishment, not my fault. Duty apart, which I hope I shall ever feel, I am not so devoid of sense as needlessly by my own act to render it notorious that I am not favourably regarded by the widow of my deceased Master and the mother of my present Sovereign. But unfortunately for me, Madam, it has been sufficiently evident that my presence was unwelcome, and for this reason alone have I abstained from obtruding myself upon your Majesty's notice; but now I do most humbly pray that your Majesty will dismiss me with the knowledge of what has been taken amiss, that I may be able to make mine innocence and integrity appear." "But," says he, speaking historically of himself in the third person, "all this prevailed not with her Majesty, who, after she had with her former passion objected his credit with the King, and his endeavour to lessen that credit which she ought to have,—concluded that she should be glad to see reason to change her opinion; and so carelessly extended her hand towards him—which he kissing, her Majesty departed to her chamber."†

While Charles was sojourning at Spa, in the society of his sister, the Princess of Orange, Hyde spent his time most happily with his wife and children at Breda; but the Court being fixed at Cologne, in the month of November he was obliged to repair thither, and to resume the irksome duties of prime minister to an exiled monarch.

An event of a domestic nature now occurred to him which afterwards led to important consequences. The Princess of Orange had been very

* Clar. Pap. iii. 188.

† Hist. Reb. b. vii. The noble historian is sure to put his opponent in the wrong in relating any controversy in which he was personally concerned, and we must always remember the enmity between him and Henrietta when we read his remarks upon her,—particularly in judging of the dark insinuations he throws out against her, while pretending to excuse her, for discouraging the escape of her husband into France, where she was then living, attended by Lord Jermyn.

kind to his family, had provided a house for them rent free at Breda, and taken great notice of his daughter Anne, now a sprightly girl reaching woman's estate. By the sudden death of a maid of honour of the smallpox, this situation became vacant in the establishment of the Princess, and Hyde in his narrow circumstances was advised to ask it for his daughter. But he declined,—saying, "that he had but one daughter, who was all the company and comfort her mother had in her melancholy retirement, and therefore he was resolved not to separate them, nor to dispose his daughter to a court life." This however was only coyness, and the matter was managed indirectly. The appointment was suggested to the Princess and to the King, who both approved of it, and they, though a little afraid of the reproaches of their mother, proposed it to Hyde. He still affected to dislike it, but agreed to leave the decision to Lady Hyde. She, well knowing what would please her husband, accepted the offer, and the future Duchess of York and mother of Queen Mary and Queen Anne, was established in the household of the Princess.

With a short interval, during which Charles removed to the sea-coast to favour a rising in England, he remained at Cologne above two years, and Hyde attended him almost as his only minister. He was now near the lowest ebb of his fortunes, and was obliged to live almost like a private gentleman, the whole expense of his establishment not exceeding 600 pistoles a month.

Hyde at this time wisely trusted to general discontent in England rather than to open insurrection or to military assistance from foreign powers. He thus reasons in a letter to Secretary Nicholas. [A.D. 1655.] "I am confident there are many officers who will always believe that they have done as much for the Commonwealth as Cromwell himself, and therefore will not be content that he should carry away the reward: and if I did not assuredly think that in that method of destruction, and from that fountain of pride and madness, they will at last determine the confusion and be each other's executioners, I should be very melancholick; for I have really more hope from that than from all the armies and fleets you and your enterprising friends will be able to draw together."*

The tranquillity of the little Court at Cologne was much troubled by the discovery of the treachery of Manning, a young Roman Catholic, who, pretending to be an ardent royalist, [A.D. 1656.] had been admitted into their inmost confidence, and who being detected in a correspondence with Secretary Thurloe, confessed that he had been Cromwell's paid spy for three years, transmitting to him in consideration of 100*l*. a month, all the plans of the royalists. By a stretch of power, which we cannot understand how Hyde, who possessed a smattering of municipal law and of the law of nations, could sanction, —the English shot him as a traitor;—pretty much in the same way as Queen Christina of Sweden soon after, when she had ceased to wear a

* Nov. 1653.

crown, thought fit to execute her chamberlain at Fontainebleau. Cromwell was advised to retaliate, but he would not recognise his spy.*

The former charges against Hyde for being himself in correspondence with Cromwell were certainly ridiculous; but many believe that seeing the splendid success of the Protector's foreign policy, the regularity of his internal government, notwithstanding the mutinous disposition of his parliaments, and the power now conferred upon him of naming a successor, the expectant Chancellor regarded him as the founder of a new dynasty, and despairing of the recall of the ancient royal line, and sick of the evils of exile, wished to be reconciled to him. The story goes, that shortly before the removal of the Court from Cologne, he wrote a confidential letter to Secretary Thurloe, with whom he had formerly been on terms of friendship, praying that he might be allowed to return with his family to his native land;—that the letter being shown to Cromwell, he readily gave his assent, thinking that such a defection would be highly detrimental to the royal cause;—that a favourable answer was returned, but that while difficulties arose as to the mode of executing the plan, a ray of hope broke in from the offered support of Spain;—that Hyde therefore resolved to prefer the chance of a Restoration;—that his letter was carefully preserved by Thurloe;—that when the Restoration did take place, Thurloe, whose head was very insecure, adventured to the house of the Lord High Chancellor, and saying he had a present to make him, delivered the letter into his hand,—and that his Lordship having perused it in some confusion, gave him thanks, bade him go and live quietly in his chambers, and promised that he should be in nowise molested.† No strong proof is brought forward to support this charge; but I must say that it is not by any means improbable, and we ought not to discredit it merely from Hyde's own professions, for he did not hesitate to practise duplicity, even with his friends. Upon this very subject while at Madrid he thus writes to Secretary Nicholas: "I know no other counsel to give you than by the grace of God I mean to follow myself, which is to submit to God's pleasure and judgment upon me, and to starve, really and literally, with the comfort of having endeavoured to avoid it by all honest means, and rather to bear it than to do any thing contrary to my duty. Compounding is a thing I do not understand, or how a man can do it to save one's life. We must play out the game with that courage as becomes gamesters who were first engaged by conscience, against all motives and temptations of interest, and be glad to let the world know that we were carried on only by conscience. Indeed, all discourse of submitting or compounding with those rogues in England hath so little of sense or excuse in it, that there needs no reply to it. You and I must die in the streets first of hunger."‡ Yet at the same time he thus discloses his secret thoughts in a letter to his intimate friend, Sir Toby

* "The wretch soon after received the reward due to his treason." This is the whole of Clarendon's account of Manning's execution.—*Hist. Reb.* b. xiv.

† See Life of Clarendon by an impartial hand. 2d ed. 1712, p. 110.

‡ Clar. Pap. iii. 24, 25.

Matthew, "And now, sir, let me tell you in your ear (as one whom I dare trust with my want of judgment), that after all my travel through the Low Countries, and I think the length of France, and little less than 400 miles in the King's dominions, England is a very convenient place; and the people were once as good company as any of their neighbours; and if they can be yet reduced to half the honesty they had, if you please I will meet you there; and if we ever come again willingly out of it, let us be banished London. But I will take no peremptory resolution till I know how far I may depend upon your conscience."*

If he did sometimes vacillate in the trying circumstances in which he was placed, we must not condemn him with too much severity. There is no reason to suppose he ever would have compromised the personal safety of the expatriated King, or betrayed any confidence reposed in him; and like Prince Talleyrand, in other revolutionary times, he might have honourably served opposite parties and dynasties as they successively gained the ascendency.

In April, 1656, Charles proceeded suddenly from Cologne to Bruges, in consequence of a negotiation opened with him when Cromwell engaged in hostilities against Spain. Hyde was, for a time, left behind to settle the financial affairs of his Majesty,—which he found no easy task. This was his first despatch. "Your family here is in an ill condition and your debts great; much owing by you and by those to whom you are indebted; and yet, that the state may not appear more dismal and irreparable to you than in truth it is, give me leave to tell you that 4000 pistoles will discharge the whole seven months' board wages which are due, pay all you owe here, supply those acts of bounty you will for the present think necessary, to those who receive not in wages, and honestly remove and bring your family to you."†

Small as the required *supply* was, the Chancellor of the Exchequer could not find *ways and means* to raise it, and four months after, still remaining himself in pawn, he thus addresses the King, "I do confess I do think that the payment of what is due at Cologne is of the most importance to you, and is to be such an ingredient in the establishing your future credit, of which you have so much use, that it ought to be compassed, even with some hazard to your Majesty of future inconvenience."‡

By receipt of the arrears of small pensions allowed him by the Elector of Cologne and other German Princes, Hyde was at last able to clear off these demands and to join his Master at Bruges.§ There he entered into a negotiation with his Holiness the Pope for his aid, upon principles sufficiently liberal; for, discouraging [A. D. 1657.]

* Clar Pap. March 18, 1650. † Ibid. iii. 293. ‡ Clar. Pap. iii. 302.

§ These distresses probably furnished the hint for one of the chapters of Addison's "Annals of the Reign of the Pretender," the son of James II. "Anno Regni 4°. He ordered the Lord High Treasurer to pay off the debts of the Crown, which had been contracted since his accession to the throne; *particularly a milk score of three years' standing*."—*Freeholder*, No. 36.

the hope of the King's conversion, he intimated his desire to put the Roman Catholics in the same condition with his other subjects; and thus concluded, "You know well, that though the King hath in himself power to pardon and dispense with the execution of laws, yet that to the Repeal of them there must be the consent of others, and therefore the less discourse there is of it the more easily it will be done; and it is no small prejudice the passion and unskilfulness of some Catholics bring to their own hopes, which must be compassed with gravity and order."*

But the negotiation least creditable to Hyde, was that which he carried on with Sexby, the enthusiast who had published the famous pamphlet, entitled "Killing no Murder;" and who, though he required a dispensation from the ceremony of *kneeling* to Charles when he came over to Bruges, had made no secret of his intention to assassinate Cromwell, as an act for which he expected to be applauded by men and rewarded by Heaven.

After Hyde had been some months at Bruges, an occurrence took [A. D. 1658.] place which materially altered his nominal rank and precedence. It was suggested in Council, that as Charles was now formally recognised as King of England by Spain, and was entering into a regular treaty, offensive and defensive, with that country, it would be proper that his own Court should assume more the aspect of royalty, and that he should have a Lord High Chancellor. There was only one person that could be named for this distinction. Clarendon very affectedly and hypocritically pretends that he urgently declined the office when it was offered to him, "giving many reasons besides his own unfitness, when there was no need of such an officer, or, indeed, any use of the Great Seal till the King should come into England; and that his Majesty found some ease in being without such an officer; that he was not troubled with those suits which he would be if the Seal were in the hands of a proper officer to be used, since every body would be then importuning the King for the grant of offices, honours, and lands, which would give him great vexation to refuse, and do him as great mischief by granting." We are asked to believe that the King not only initiated, but vigorously carried through the measure, and now said, "*he would deal truly and freely with him; that the principal reason which he had alleged against receiving the Seal, was the greatest reason that disposed him to confer it upon him.* Thereupon he pulled letters out of his pocket, which he received lately from Paris, for the grant of several reversions in England of offices and lands; one whereof was of the Queen's house and lands of Oatlands, to the same man who had purchased it from the State; who would willingly have paid a good sum of money to that person who was to procure such a confimation of his title; the draught whereof was prepared at London, upon confidence that it would have the Seal presently put to it; which being in the King's hand, none need, as they thought, to be privy to the

* Clar. Pap. iii. 291.

secret. His Majesty told him also of many other importunities with which he was every day disgusted, and that he saw no other remedy to give himself ease, than to put the Seal out of his own keeping into such hands as would not be importuned, and would help him to deny. And, therefore, he conjured the Chancellor to receive that trust, with many gracious promises of his favour and protection. Whereupon the Earl of Bristol and Secretary Nicholas using likewise their persuasion, he submitted to the King's pleasure; who delivered the Seal to him in the Christmas time in the year 1657."

I must nevertheless be permitted to doubt whether, in the absence of all other lawyers, the King, or any human being about the Court of Bruges, would have ever thought of the office of Chancellor, or recollected that there was in existence such a bauble as the Great Seal, which had lain neglected in the bottom of an old trunk ever since it was taken from Lord Keeper Herbert at Paris,—if Hyde himself, now beginning to see a better prospect of the King's recall, and anxious that, when that event arrived, he should have no competitor for the office of Chancellor, had not deemed this a convenient opportunity for securing it, and had not indirectly contrived that it should be offered to him.*

The exact day of the appointment is fixed by the following entry in the register in the Council office:—

"Att the Court att Bruges, the thirteenth day of Jan^y. 1658, st. n. "Present, His Majestie. [JAN. 13, 1658.]

"Duke of York.
"Lord Lieut. of Ireland (Ormond).
"Mr. Secretary Nicholas.
"Mr. Chancellor of the Exchequer.

"His Majestie declared his resolution to leave his Greate Seale in custody of an officer, and therefore had made choice of Sir Edward Hyde, Chancellor of the Exchequer, to be Lord Chancellor of England, unto whom he forthwith delivered the Greate Seale, and commanded him to be sworn; who took the oath of supremacy and allegiance upon his knee at the board, and Mr. Secretary Nicholas gave him the oath of Lord Chancellor of England, and then he took his place by his Majesty's command."

* He evidently assigns a reason that could have no real connexion with the transaction.—"Sir Edward Herbert, who was the last Lord Keeper of the Great Seal, being lately dead at Paris." The Great Seal had been taken from Herbert on the removal of the Court from Paris in 1654. But this statement has misled almost all writers who have noticed the subject, to state that Herbert continued Lord Keeper as long as he lived, and that it was on the vacancy occasioned by his death that Hyde was appointed.

CHAPTER LXXVIII.

CONTINUATION OF THE LIFE OF CLARENDON TILL THE RESTORATION OF CHARLES II.

[A. D. 1658.] The new Lord Chancellor, instead of proceeding in state to Westminster Hall, attended by nobles and Judges, and making an inaugural speech before an admiring crowd in the Court of Chancery, or explaining, in the presence of the Sovereign, and the Lords, and the Commons, the reasons for calling a parliament, or presiding in a Council where great national questions were to be determined, had long, for his sole occupation, to provide for the daily necessities of the little domestic establishment, called "the Court of England," at Bruges. The pension from France had entirely ceased, as Charles was now to consider himself at war with that country; and the magnificent promises of a liberal supply from Spain had utterly failed. The consequence was, that the King's finances were in a more dilapidated state than ever, and the debts of his Crown, consisting of his tradesmen's weekly bills, increased most alarmingly. Thus writes his prime minister, who now combined in his own person the duties of Chancellor of the Exchequer and Lord High Chancellor:—"Every bit of meat, every drop of drink, all the fire and all the candles that hath been spent since the King's coming hither, is entirely owed for; and how to get credit for a week more is no easy matter. Mr. Fox* was with me yesterday, to move the King that he would let his own diet fall, and content himself with one dish." So hard was "the Chancellor" pushed, that he was obliged to write the following letter, and to get Charles to copy it, to his sister, the Princess of Orange:—"I know you are without money, and cannot very easily borrow it,—at least upon so little warning; but if you will send me any jewel that I may pawn for 1500*l.*, I do promise you you shall have the jewel again in your hands before Christmas."†

[Sept. 1658.] The darkest and coldest hour of the night is immediately before break of day. Sexby, meditating assassination, had been detected and shut up in the Tower, but while the royal party were in a state of the deepest despondency at Bruges, a report was spread that Oliver, on whose single life the present *régime* in England was supposed to depend, was dangerously ill of an ague, and in a few days a messenger arrived, announcing that he was no more. Great, at first, was the exultation of Charles and his courtiers, and they all expected in the course of not many days to be in possession of Whitehall. But they were thrown into consternation by the

* Afterwards Sir Stephen, and the ancestor of the Holland and Ilchester families.
† Clar. Pap. iii. 378.

next news that Richard had been peaceably proclaimed; that his title had been acknowledged by the army as well as all the civil authorities; that addresses, pledging life and fortune in his support, were pouring in from all quarters; and that he had been congratulated on his accession to the Protectorate by all the foreign ambassadors in London. There was now what the lawyers called "a descent cast," whereby, on the death of an ejector, protection is given to the possession of his heir. The restoration of the House of Stuart seemed for ever barred by the acknowledged title of a rival dynasty. "We have not," said Hyde, softening the despondence which he felt that he might not discourage others, "yet found that advantage by Cromwell's death as we rationally hoped; nay, rather we are the worse for it, and the less esteemed; people imagining by the great calm that hath followed, that the King hath very few friends."*

The hopes of the Court at Bruges, however, were soon revived by intelligence of the discontents of the army, and the feuds of its rival chiefs,—which almost from the beginning [Nov. 1658.] shook the throne of Richard. When he summoned a parliament, and, departing from his father's reformed system of representation, sent writs to the rotten boroughs, Hyde wrote to the royalists in England, advising that as many of them as possible should quietly get themselves returned to the House of Commons. On the meeting of parliament it was found that they were more numerous than could have been expected, and for the ultimate good of the cause they did not scruple to take the oath of fidelity to the Commonwealth and abjuration of the Stuarts. Hyde suggested to them an obstructive line of policy—that they should denounce the arbitrary acts of the administration of the late Protector—that they should hold up to particular odium Thurloe and St. John, who were the most inflnential advisers of the new Protector—that they should oppose all raising of moneys, and whatever might tend to a settlement of the Government—that they should widen the breach between the Cromwellites and the Republicans—and that they should throw their weight into the scale of either party in such manner as might most conduce to the interests of the King.

At this time it was thought that if Richard had been out of the hands of Thurloe and St. John, he would himself have declared for the restoration, "from the difficulties and dangers he met with in his government, and the safe and honourable advantages that he might receive by an accommodation with the exiled family," and Hyde seems to have believed that "he intended wholly for the King."†

The small royalist party in the House found it expedient to prevent Richard from being too soon precipitated from power, lest Fleetwood or Lambert, with a considerable share of the military reputation and energy of Oliver, might be elevated on the bucklers of the soldiers. They, therefore, voted for the recognition of his title as Protector, after they had succeeded in expunging the word "undoubted,"—and it was carried by a majority of 191 to 168. They likewise joined in the

* Clar. Pap. iii. 422. † Ibid. iii. 434, 454.

majority for acknowledging with some qualifications the other House of Parliament, consisting of Oliver's Peers. But they joined most heartily with the republicans in exposing the tyrannical proceedings of Oliver's Major Generals and High Courts of Justice, which they said far exceeded in violence any sentences of the Star Chamber or High Commission Court abolished by the late King. They likewise pointed out the enormous increase in the public expenditure, and the arbitrary exactions by which it was supplied,—depicting, in glowing colours, the happy, tranquil, taxless times which the more aged might still remember. All this was supposed to be only out of odium to the Protectorate as against a pure republic, but was meant to bring back the affections of the people to royalty. A favourable impression being made, Hyde wrote to them to move the impeachment of Thurloe and St. John. This they were not strong enough prudently to attempt; but they followed up the blow with great effect on the presentation of Petitions from various persons who had been illegally imprisoned without warrant or cause assigned, or whose relations had been transported without a trial to Barbadoes, and there sold as slaves.

After a session of less than three months, the Protectorate had been [MAY, 1659.] so effectually damaged that Richard, as the only step to save himself, did what proved his instant ruin, by dissolving the parliament,—and the army was for a time triumphant. Hyde, watching this movement at Brussels, felt much alarm, which was not quieted by the restoration of the "Rump," where he had no friends. A majority of the survivors of the Long Parliament, though Presbyterians, were for royalty; but the Members turned out by "Pride's purge" were still excluded, and those in whom the supreme power was now nominally placed were the section who had voted for the death of Charles I., and were devoted republicans. However, they had no hold of public opinion; and when they affected to assert their [OCT. 1659.] independence by cashiering Lambert and Desborough, the nation was rejoiced to see them again expelled, although for a time the government fell into the hands of a self-elected council of state. All these changes aggravated the general confusion, and were favourable to the King. There was now a growing desire for his return, to which Hyde wished to trust rather than to partial insurrections in his favour, saying, "I confess without a general conjunction, and therefore kindling the fire in several parts of the kingdom together, I cannot imagine how any simple attempt, how bravely soever undertaken by our friends alone, can be attended with success."*

A general rising was concerted, with Hyde's concurrence, in the month of July, but fortunately (for it must have led to much bloodshed) it was prevented by the treachery of Sir R. Willis, who in an age where, generally speaking, there was great party fidelity, was false, first to the republicans, and then to the royalists.

* Thurloe, i. 746. Burton's Diary, iv. 255.

Charles in the autumn of this year went to the coast of Brittany, intending from thence to make a landing in Wales or Cornwall, and this plan being abandoned, proceeded to join the conference at Fontarabia, in the vain hope of inducing France and Spain to unite in supporting his cause. Hyde meanwhile remained stationary at Brussels, carrying on a secret correspondence with almost all parties and classes of men in England, and seeing more and more clearly the satisfactory prospect of the King being restored by the spontaneous movement of his own subjects. The mode in which the restoration would be accomplished, in the face of the formidable army under Fleetwood and Lambert, composed chiefly of republicans and independents, no one distinctly foresaw; but a general feeling prevailed that it was inevitable, and most men began to speculate how it might best be brought about for their own safety and advantage. About this time it was that Whitelock had persuaded Fleetwood to declare for the King,* meaning himself to bring over the Commonwealth's Great Seal to Charles,—in which case Monk's real intentions would never have been ascertained, and he would have been almost unknown in history. When Hyde heard the probability of Fleetwood's defection from the republican party, he had no confidence in his firmness, and he thus expressed himself:—" The character which we have always received of the man is not such as makes him equal to any notable design, or to be much relied on to-morrow for what in truth he resolved to do yesterday: however, as his wit is not so great as some of the rest, so his wickedness is much less apparent than any of theirs, and therefore industry and dexterity must be used to dispose and confirm him in his good intentions, and let him take his own time for the manifestation of it."†

One of the most amusing proposals made to Hyde was from Lord Hatton, a most zealous royalist,—that Charles should gain over General Lambert by marrying his daughter,—urging " that no foreign aid would be so cheap or would leave the restored monarch at such liberty,—commending withal the beauty and disposition of the lady, the distinguished bravery of the father, and the respectability and antiquity of their lineage." No answer was returned,—that the alliance might not be considered absolutely rejected.

But in common cases, Hyde was not at all scrupulous in trying to gain the support of any party, or any individual, by lavish promises. He distinctly gave the Presbyterians to understand that they were to be favoured, and he got the King to write " a great many very obliging letters to their leaders to the same effect," so that many of them cooperated in the restoration in the belief that Presbytery was to be adopted as the established religion, and all the rest in the full faith that at all events they would have the same civil rights as the Episcopalians. " The management of all this," says Burnet, " was so entirely the Chancellor's, that there was scarce any other that had so much as

* Ante, p. 87, *et seq.* † Clar. Pap. iii. 592.

and share it with him."* We shall hereafter see whether he kept the word of promise, either to the ear or to the hope, when we relate the passing of "The Corporation Act," "The Act of Uniformity," and "The Conventicle Act."

Hyde early had the penetration to discover Monk's great influence, [A.D. 1660.] and the probability of his using it for the King. Soon after Cromwell's death he received a letter from Colepepper, pointing out Monk "as able alone to restore the King, and not absolutely averse to it, neither in his principles nor in his affections," and describing him as likely to be dissatisfied with the advancement of Richard, "being a sullen man, that values himself enough, and much believes that his knowledge and reputation in arms fit him for the title of Highness and the office of Protector better than Mr. Richard Cromwell's skill in horse races and husbandry doth." Hyde therefore wrote a letter, which Charles copied, to be shown to Monk—addressed to Lord Falconbridge, Lord Bellasis, and Sir John Grenville, or either of them:—"I am confident that George Monk can have no malice in his heart against me, nor hath he done any thing against me which I cannot very easily pardon: and it is in his power to do me so great service that I cannot easily reward, but I will do all I can, and I do authorize you, and either of you, with the advice of the rest, to treat with him; and not only to assure him of my kindness, but that I will very tolerably reward him with such an estate in land, and such a title of honour as himself shall desire, if he will declare for me and adhere to my interest; and whatever you shall promise to him on my behalf, or whatever he or you by his advice shall promise to any of his officers in the army under his command (which command he shall still keep), I will make good and perform upon the word of a King."†

Charles soon after was induced to write a letter to Monk himself containing similar assurances; and a brother of Monk, a clergyman in the West of England, was employed, under Hyde's directions, to undertake a journey into Scotland for the purpose of sounding his intentions. But the wary General could not be drawn into any correspondence with the exiled Court. For some reason which has not been explained he showed a marked antipathy to Hyde, and there was no intercourse between them till they met at Dover on the King's landing.

Even when Monk was advancing with his army into England, Hyde, not unreasonably, had a great distrust of him, and suspected that he meant to set up himself for Protector as soon as he should have got the better of Lambert, as "honest George" continued from time to time to declare—"We must live and die for and with a Commonwealth;"—call God to witness "he had no intention to embrace his Majesty's interest, nor ever would he;"—at York caned an officer for saying, "George will at last let in the King;"—and even after his arrival in London made a speech to the excluded members about to be restored to their seats in parliament, asserting his preference for "a republican

* Burnet's own Times, i. 150. † Clar. Pap. iii. 417.

government and a Presbyterian church." But in the beginning of March Hyde's suspicions were nearly dissipated, and he writes to a friend, "If Monk hath from the beginning intended well, he hath proceeded very wisely in the steps he hath made."* [MARCH, 1660.]

After Charles's return from the conference at Fontarabia, Hyde continued with him at Brussels anxiously watching the proceedings in England without being able in any perceptible degree to influence them. His chief task was to restrain indiscreet enterprises, and to induce those around him to wait patiently for the coming events, whose shadows might be so distinctly discerned. He found it particularly difficult to allay the jealousies which broke out among the royalists themselves, all now officiously struggling to make their services conspicuous, and to lay the foundation for future favours. "Those who are trusted a little," said he, "would be trusted more and know more, and are troublesome upon their being disappointed. I know no security but to be obstinate in applying them only to what they are fit for."† He was obliged to remonstrate with Lord Mordaunt, whom, under the guise of describing the sentiments of other friends of the King, he thus addressed:—"First, it is said that you take the whole business upon yourself; and therefore they do or pretend to believe that the King hath given the whole power to you, as well in martial as in civil affairs. Secondly, they seem to apprehend that all that is or shall be done is looked upon as your entire work, and the effect of your interest and conduct, and that they are not represented, or shall be considered as co-partners in any thing."‡

The great anxiety at Brussels now was to ascertain what conditions the Convention parliament, when assembled, would propose. Better than such as had been demanded from the late King while he was in the Isle of Wight were not expected, and these would have been very readily conceded. Almost the last vote of the last parliament—acting freely,—with all its members restored,—and after having resolved to recall the King, was "that Presbyterianism should be the established religion of the kingdom;"—and no one on either side of the water yet appreciated the accelerated strength with which the cavalier spirit, enthusiastic and vengeful, raged throughout the country.

At length, Sir Matthew Hale having made his motion for "a Committee to consider the propositions that had been made to, and the concessions that had been offered by, the late King during the war, particularly at the treaty of Newport, that from thence they might digest such propositions as they should think fit to be sent over to the King," it was strenuously resisted by Monk, who wished to have the glory of an unconditional restoration, and asked, if propositions were fit, "might they not as well prepare them, and offer them to him when he should come over?" Such cheers were elicited by the General's blunt speech, that the motion was dropped. "This," [MAY 2, 1660.]

* Clar. Pap. iii. 694. † Ibid. iii. 684. ‡ Ibid. iii. 684.

says Burnet, ironically, "was indeed the great service that Monk did!"* When the result of the debate was transmitted to Charles and his minister, they saw, with great delight, that every thing was now in their discretion, and they deserve credit for the moderate use which, in the first instance, they made of the absolute power over three kingdoms, which, as if by magic, was in a moment vested in them.

During this enthusiastic burst of loyalty they were established at Breda, having secretly left Brussels under the apprehension that, in the prospect of Charles's recall to the throne of England, he might have been detained as a hostage by the Spaniards for the restoration of Jamaica and Dunkirk, which had been taken from them by Cromwell. Here gracious letters were written, in the King's name, to Monk and the army, to Montagu and the navy, to the House of Lords, to the House of Commons, and to the Lord Mayor and citizens of London; and here Hyde penned the famous "Declaration from Breda," granting pardon to all such as should claim it within forty days, and return to loyalty and obedience, excepting only such persons as should thereafter be excepted by parliament, providing that *no man should be disquieted or called in question for differences of opinion in matters of religion which do not disturb the peace of the kingdom;* declaring that all questions relating to grants, sales, and purchases of public property should be determined in parliament, and that the army under the command of General Monk should be taken into the King's service, on as good pay and conditions as they then enjoyed.

Nothing now remained, except that Charles should select a port of embarkation, as if, having been long in possession of the Crown, he had been returning to his dominions after a friendly visit to some allied Sovereigns on the Continent;—only that he was more eagerly longed for by his subjects than ever was monarch who had actually reigned.

Hyde accompanied him from Breda to the Hague, amidst the acclamations of the population through which they passed, and was regarded with peculiar interest and favour as the faithful companion of the exiled, and the future minister of the restored, Sovereign. On the 23d of May they embarked on board the English fleet at Scheveling, under the command of Montagu, and on the 25th they landed at Dover.† What must have been Hyde's sensations when, under such circumstances, he again set foot on English ground! He had now been in exile above fourteen years,—during which he had been exposed to all sorts of perils, privations, and mortifications, and he had often seen reason to abandon himself to despair. Now enjoying both royal favour and popular applause, every thing that an ambitious man could desire had been accomplished by him, or was within his reach;—a splendid provision for his family, so often destitute, was now secured;—he had already achieved a name in history;—and about to guide the destinies

* Burn. own Times, i. 152.

† It is curious enough that Charles selected the "NASEBY" man-of-war to carry himself and his immediate attendants.

of the British empire, he might hope to be long the instrument of conferring blessings on his country and his kind.

Bearing the Great Seal, which had been delivered to him at Bruges, and which was now an ensign of real power,* he accompanied the King in the grand ovation from Dover,—entering London on the 29th of May, " with a triumph of above 20,000 horse and foot, brandishing their swords, and shouting with inexpressible joy—the ways strewed with flowers—the bells ringing—the streets hung with tapestry—fountains running with wine; the Mayor, Aldermen, and all the companies in their liveries, chains of gold, and banners; lords and nobles clad in cloth of silver, gold, and velvet; the windows and balconies all set with ladies; trumpets, music, and myriads of people flocking, even so far as from Rochester."†

On the arrival of the procession at Whitehall, the two Houses of Parliament were there to receive the King. As Hyde had not yet taken his place as Lord Chancellor on the woolsack, he stood during this ceremony on his Majesty's right hand, and the Earl of Manchester, acting once more as Speaker of the House of Lords, delivered their address of congratulation.

CHAPTER LXXIX.

CONTINUATION OF THE LIFE OF LORD CLARENDON TILL THE MEETING OF THE FIRST PARLIAMENT OF CHARLES II.

On the 1st of June Hyde entered on the regular discharge of his parliamentary and judicial duties. At the meeting of the House in the morning of that day, though still a Commoner, he took his place on the woolsack as Speaker by prescription. [A.D. 1660.]

Soon after the King came in state, and, the Commons being summoned, made a short speech to both Houses, and then commanded the Lord Chancellor to deliver his mind farther to them. The Journals tell us that he did so, but there is no trace of his speech on this interesting occasion any where to be found.‡ The royal assent was then given to a bill for turning the Convention, so irregularly called, into a lawful Parliament, and to some other necessary acts; when " the Lord Chancellor told both Houses with how much readiness his Majesty had

* The Commonwealth Great Seal under which the convention parliament had been summoned in the name of "the Keepers of the Liberties of England," was broken to pieces on the 28th of May. *Ante*, p. 95.

† Evelyn, who was an eye-witness.—*Mem.* ii. 148.

‡ It must have been, at all events, much to the taste of his audience, for the following day " the House gave the Lord Chancellor thanks for his excellent speech yesterday."—*Lords' Jour.* June 2, 1660.

passed these important acts, and how willing they should, at all times hereafter, find him to pass any other that might tend to the advantage and benefit of the people;" in a particular manner desiring, in his Majesty's behalf, that "the Bill of Oblivion, in which they had made so good a progress, might be expedited;—that the people might see and know his Majesty's gracious care to ease and free them from their doubts and fears, and that he had not forgotten his gracious declaration made at Breda, but that he would, in all points, make it good."*

The same day Hyde took his seat in the Court of Chancery, and the oaths of supremacy and allegiance, and the oath of office, were administered to him.†

He certainly must have been very unfit for the judicial duties of the office. He never had been a well-grounded lawyer, and he had never practised much in Courts of Equity. It was now twenty years since he had entirely left the bar. In the interval he had not attempted to keep up any knowledge of his profession; and the important political occupations which constantly harassed him must have chased from his mind nearly all the judicial notions which had ever entered it, so that by this time he could hardly have recollected the distinction between *legal* and *equitable* estates, or known the difference between a bill of *discovery* and a bill for *relief*. He had cherished the prospect of holding the Great Seal in England, but he had no English law books with him at Bruges, at Brussels, or at Breda; and, while residing in those places, the whole of his time had been engrossed in projecting and watching over measures for the King's restoration.

There were strong efforts made by different parties and individuals to exclude him from the office on political grounds. The Presbyterians, headed by Lords Manchester and Bedford, had said that "they could not be secure if they permitted so much as a kitchen-boy to be about the King of his old party," and though they regarded him as "a man to keep out popery," believing him to be "irreconcilable to their form, notwithstanding his fair professions in their favour," they were exceedingly desirous that he should not retain a situation of such power and influence. He was equally obnoxious to the Catholics, notwithstanding the hope he had held out to them that they should be safe from the dispensing power of the Crown till the penal laws against them should be repealed by the legislature. Monk was still his secret enemy, and Queen Henrietta, with her friend, Lord Jermyn, retaining her ancient grudge, intrigued against him, particularly with the Pres-

* 4 Parl. Hist. 64.

† "Anno duodecimo Caroli Scdi R^s^. June 1, 1660.

"The Right Hono^ble^ S^r^. Edward Hyde, Knt. Lord Chaunc^r^. of England, coming into the Court of Chauncery att West^r^. accompanied by the Right Hono^ble^ the Lord Culpeper, M^r^. of the Rolls, before his Lords^p^ entering upon anye busyness, took the oathe of the office of Chaunc^r^. of England, the booke being held to him by the said M^r^. of the Rolls the first day of June, in the yere aforesaid, being alsoe the first day of his Lop.'s sitting, and the first day of Terme, the former part not being kept. The Lord Chauncellor took the oathes of supremacye and allegeance, and the oathe of Lord Chauncellor."—*Crown Off. Min. B.* fol. 15.

byterian leaders. It was much pressed upon the King that he should give the Great Seal to Sir Orlando Bridgeman or Sir Jeffery Palmer, lawyers who had not attached themselves strongly to any party or sect, and from whom all might expect some advantage.*

But the judicial qualifications of the person to be preferred were little thought of. The notion seems still pretty generally to have prevailed, that though to preside properly in a court of common law required a long course of professional study and experience,† any man of plain sense and good intentions might "mitigate the rigour of general rules, and do what was just between the parties in each particular case,"—which was the vulgar notion of equity. Nay, it is asserted that Sir John Grenville, in his first negotiation with Monk, "propounded to the General 100,000*l.* *per annum* for ever, as his Majesty's donation to him and his officers, *with the office of Lord High Chancellor* and Constable of England for himself, and the nomination of any other great officers of the Crown." We may well doubt whether such an offer ever was made—at least with the authority or privity of Hyde; but the circulation of the story shows that men then contemplated the possibility of their having a military Chancellor in Westminster Hall, as there still is in some of our colonies.

The opposition to Hyde's retaining the Great Seal was so formidable, that he seems to have offered to resign it rather than hazard the harmony of the Restoration;‡ but he was warmly supported by Southampton, Ormond, Nicholas, and Colepepper. The King, long accustomed to be guided by him, was "yet wholly in his hands,"—though giving wise and good advice, "he did it too much with the air of a governor or of a lawyer." In truth, for some years "he carried the Crown in his pocket." Clarendon showed his generosity by appointing Bridgeman and Palmer, his rivals for the Great Seal—the one Lord Chief Baron of the Court of Exchequer, and the other Attorney-General.§

As a Judge he conducted himself with such prudence and discretion, and made such wise use of the knowledge and abilities of others, as to escape complaint, and even to be reckoned a good Chancellor. He had always two Masters in Chancery to keep him right in matters of practice, and he never made a decree without the assistance of two of the Judges.‖ He acquired much credit by publishing some salutary regulations for the better administration of the offices of the Masters in Chancery and the Six Clerks, still known and cited under the name of "Lord Clarendon's Orders."¶ These were prepared under his directions by Sir Harbottle Grimston, the Master of the Rolls, assisted by the officers of the Court, and consist chiefly of Lord Keeper Whitelock's

* Clar. Pap. iii. 655, 705, 728, 744.

† "Lucubrationes viginti annorum."

‡ Price's Mystery and Method of the Restauration.

§ Burn. own Times, i. 150.

‖ See note of Speaker Onslow to ed. of Burnet. Oxford, i. 161.

¶ Although it was not till some months after that he was raised to the peerage, it may be convenient that he should now be denominated by the title under which he is familiar to us from the Restoration.

orders, and some of the least exceptionable articles in Cromwell's famous Ordinance for reforming the Court of Chancery, which could no longer be directly referred to.*

When Clarendon was finally established, and in great favour both with the King and the parliament, his intimate associate, the Duke of Ormond, privately urged him to resign his judicial office and to accept the staff of Lord High Treasurer, stating "that all his best friends wondered that he so much affected the post he was in as to continue in the office of Chancellor, which took up most of his time, especially all the mornings, in *business that many other men could discharge as well as he*."† He replied, "that he would sooner be preferred to the gallows." He probably felt that he would be more exposed to envy, and that his hold of power would be more precarious, in an office purely political. He had resigned the office of Chancellor of the Exchequer, which he had nominally held so long under two reigns, and had been succeeded in it by Sir Anthony Ashley Cooper.‡

We must now attend to his proceedings as prime minister, for it was as a statesman that he was chiefly regarded in his own and succeeding times. He was much embarrassed by the numerous attendance of Privy Councillors, the distinction between the Privy Council and the Cabinet, so familiar to us, not being yet established. To obviate this difficulty, he procured the appointment of a committee, ostensibly for the consideration of foreign affairs, but in reality to discuss all measures, whether of foreign or domestic policy, before they were submitted to a board and formally determined upon.§ Monk, and Morrice his nomi-

* See "Collections of such of the orders heretofore used in Chancery, with such alterations and additions thereunto as the Earl of Clarendon, Lord Chancellor, and Sir H. Grimston, Master of the Rolls, have thought fit to ordain and publish for reforming of several abuses in the said Court."—12mo. editions, 1661, 1669, 1676, 1688.—*Beames's General Orders*, p. 165.

† No reflection being meant upon him as a Judge—and another proof that to preside in the Court of Chancery was not then considered what the Scotch call "*a kittle job*."—*Life*, *Continuation*, 14.]

‡ He remained Chancellor of the Exchequer till May 13, 1661, the date of Sir A. A. Cooper's appointment. The Treasury was put into Commission, 19th June, 1660, Sir E. Hyde being one of the Commissioners, and named first as Chancellor of England. The other Commissioners were, Marquis of Ormond, Sir George Monk, Earl of Southampton, Lord Roberts, Lord Culpepper, Sir E. Montagu, Sir E. Nicholas, and Sir W. Morrice. Sept. 8, 1660, this Commission ceased, and Lord Southampton was made Lord High Treasurer; and by another patent, dated 12th Sept., was empowered to perform all the duties of Under-Treasurer during the vacancy of that office. May 13, 1661, Sir A. A. Cooper was made Chancellor of Exchequer and Under-Treasurer. It is the Under-Treasurership that is properly the financial office. The Chancellor of the Exchequer, as such, was the Chief Judge on the equity side of the Court of Exchequer. The two appointments are still kept nominally distinct, and might be conferred on different individuals.

§ The King was present at all the Meetings of this Committee. Lord Culpepper was also a member, but he died very soon. In the State Paper Office are minutes by Sir E. Nicholas, of the Meetings of the Committee in the first year after the Restoration. It was arranged at the outset, that it should meet every Monday and Thursday morning at ten, in the Lord Chancellor's chamber. This Committee was also called the "Cabal" from the first, and long before the so-called "Cabal Ministry." Sir E. Nicholas's minutes are all endorsed C. B. The word "Cabal," derived

nee, were admitted to this secret consultation; but the Chancellor insured his control over them by the presence of Ormond, Southampton, and Nicholas. He had likewise frequent conferences "with such members of the parliament who were most able and willing to serve the King, to concert all the ways and means by which the transactions in the Houses might be carried with the more expedition and attended with the best success.* The office of foreign secretary being still unknown, the Chancellor wrote the instructions for all the ambassadors abroad, and regularly corresponded with them, besides superintending the important parliamentary proceedings now necessary to consolidate the Restoration.†

The first great measure to be carried was "the Bill of Oblivion and Indemnity," and much praise ought to be bestowed on Clarendon for pushing it through without introducing more numerous exceptions,—notwithstanding the vindictive spirit prevailing in the Commons, and still more in the Lords, where it was denominated "a bill of *oblivion of loyalty and indemnity to treason*."‡

from the Hebrew, had long before been introduced, both into the French and English languages,—originally meaning only *secret* or *mysterious*, and gradually savouring of *intrigue* and *conspiracy*.—If the fact had not been ascertained that the King attended the meetings of this Committee, it might have been considered the origin of our present Cabinet Meetings, but down to the end of Anne's reign, the sovereign in England was always present at state deliberations, and the practice was not altered till the accession of George I., who being wholly ignorant of our language, absented himself from them, and was content with being told the result in bad Latin, the only medium of communication with his minister. George II., although he knew a little English, naturally fell into the same course, and by the end of his reign this mode of transacting business was considered as permanently engrafted into our constitution; otherwise, George III. would very eagerly and very inconveniently have restored a practice which undoubtedly adds much to the personal influence of the sovereign, although by no means tending to the good government of the country. I must own, however, that our monarchical forms are hardly enough respected, and amidst the talk of "the Duke of Wellington's Government," "Lord Grey's Government," "Lord Melbourne's Government," and "Sir Robert Peel's Government," it seems to be forgotten that there is a sovereign on the throne.

* Life, i. 362.

† There were then two principal Secretaries of State, but they were little better than chief clerks attending the Privy Council and the Committee of Foreign Affairs, and obeying instructions. By and by the world was divided between them, one having to correspond with countries in the north, and the other with countries in the south. This division continued till the middle of the reign of George III. when the Home and Foreign departments were separated, and at last a third secretary was added for the colonies. But still, in point of law, they have all the same powers and functions. During the time of the northern and southern division, it was said that they were like two coachmen on the same box—each intrusted separately with one rein, to the great peril of the passengers.

‡ It was necessary to send several messages to the two Houses in the King's name, praying them to expedite the Bill. The draught of one of these in Clarendon's handwriting is preserved in the Bodleian Library: "His Majesty taking notice of the delay in the passinge the Bill of Indemnity, and of the greate obstructions to the peace and security of the kingdome which aryse from that delay, doth very earnestly recommend to the House of Peers that they will use all possible expediçon in passinge the same, and that they will rest satisfyed with the excepçons they have already made of persons, and from henceforwarde that they not thinke of any farther excepçons of persons either as to life or estate, or any other incapacity, but endea-

The next question was the settlement of the revenue, and it was proposed by some that the Chancellor should now get for the Crown a perpetual grant, which would for ever render it independent of parliaments; but, believing the scheme to be impracticable or inexpedient, he entirely discountenanced it. "It was believed," says Burnet, "that if two millions had been asked he could have carried it. But he had no mind to put the King out of the necessity of having recourse to his parliament. The King came afterwards to believe that he could have raised both his authority and revenue much higher, but that he had no mind to carry it farther or to trust him too much."* The grant was limited to 1,200,000*l.*, and ways and means were not provided for more than one half that amount, insomuch that the King was obliged to make the following speech to the two Houses, which if it was prepared by Clarendon, as we are bound to suppose, shows, that pecuniary pressure could make the Historian of the Rebellion lay aside the sesquipedalian words in which he usually delighted. "I must tell you," said the King in his speech to the parliament, on the 29th of August, 1660, "that I am not richer, that is, I have not so much money in my purse as when I came to you. The truth is, I have lived principally ever since upon what I brought with me, which was indeed your money. You sent it to me, and I thank you for it. The weekly expense of the navy eats up all you have given me by the bill of tonnage and poundage. Nor have I been able to give my brother one shilling since I came to England, nor keep any table in my house but where I eat myself; and *that which troubles me most is to see many of you come to me at Whitehall, and to think you must go somewhere else to seek a dinner.*"†

The plan was now carried into effect which Clarendon had long contemplated, of sanctioning the abolition of the military tenures, with their incidents of reliefs, wardships, and marriages, which brought great profit and patronage to the Crown, but were most burdensome and oppressive to the landed aristocracy, and had been substantially abolished during the Commonwealth by suppressing the Court of Wards and Liveries. The bill, as he introduced it, very equitably charged the 100,000*l.* to be given to the King upon the land, which was to be relieved; but an amendment was moved throwing it on the Excise, which had been imposed as a temporary tax on articles of consumption. The amendment was stoutly opposed in the House of Commons, and was shown to be so flagrantly unjust, that even some country squires voted against it, so that it was only carried by a majority of 151 to 149. This may be considered the commencement of a new system of legislation by the landed interest for their own immunity: anciently not only was the regular permanent revenue of the Crown chiefly derived from charges upon land, but when extraordinary aids and subsidies were voted, almost the whole fell upon the land,—and, except on the importation of wine

vour by all means to bury all thoughts of animosity and revenge, that the whole island may returne to those mutuall offices of conversation and friendship which alone can establish a firm and lastinge peace."

* Burnet, i. 271, 435. † Lords' Journ. Aug. 29, 1660.

and some other foreign commodities, personal property was exempted from almost all fiscal burdens.

There was still considerable apprehension from the army of the Commonwealth, which, had it known its own strength, could have commanded the kingdom; but the Chancellor showed great address in the mode adopted for disbanding it. In a speech which he addressed to both Houses in the presence of the King, he described it as "an army whose order and discipline, whose sobriety and manners, whose courage and success had made it famous and terrible all over the world; but his Majesty having the felicity of being without danger at home or from abroad, knew that Englishmen would not wish that a standing army should be kept up in the bowels of their own country. Out of regard to public liberty therefore the soldiers were to become citizens, and to take delight in that peace which they had so honestly and so wonderfully brought to pass."*

The Chancellor's attention was next devoted to the trial of the regicides. Although his name was placed in the commission after that of the Lord Mayor of London, he did not take his place on the Bench during any of the trials, but he was obliged to exercise a general superintendence over the proceedings. It was without difficulty resolved that the indictment should be for "compassing the death of the King,"—murdering him not being a substantive treason,—and that the decapitation should be laid only as the overt act to prove the compassing;—but very puzzling questions arose, whether the decapitation should be alleged to have taken place in the reign of Charles I. or Charles II.?—and against the peace of which Sovereign the offence should be alleged to have been committed? The Chancellor ordered the Judges to be previously consulted. They agreed that all that was done tending to the King's murder, until the moment before his head was completely severed from his body, was in the time of his own reign, but that the murder was not perfected till the actual severance,—when Charles I. being supposed to have died, a demise of the Crown had taken place, and a new Sovereign must be considered as *de jure* on the throne. They resolved, however, that "the compassing should be laid on the 29th of January, 24 Car. I., and the murder *trecesimo mensis ejusdem Januarii*, without here naming any year of any King; and that the indictment should conclude, *contrà pacem nuper domini Regis coron' et dignitat' suas, necnon contrà pacem domini nunc Regis coron' et dignitat' suas.*"

I do not think that blame is imputable to Clarendon with respect to any of the unhappy men who suffered, except Sir Harry Vane, who was not concerned in the King's death, and was charged with treason merely for having afterwards acted under the authority of the parliament. No satisfactory answer could be given to the plea that the parliament was then *de facto* the supreme power of the state, and that it could as little be treason to act under its authority as under the authority of an usurper on the throne,—which is expressly declared by the statute

* 4 Parl. Hist. 120.

of Henry VII. not to be treason; and it was miserable sophistry to which the Court was obliged to resort, that, as there was no one else acknowledged as King in England, Charles II., while in exile, must be considered King *de facto* as well as *de jure*. The high cavaliers might be excused for wishing, by any means, to bring down vengeance on VANE, because he was the chief cause of the death of STRAFFORD; but Hyde should have remembered that he himself voted for Strafford's impeachment, and for his attainder.

He must likewise be severely blamed for suffering the exhumation of the bodies of Cromwell and some of his associates, who had died before the Restoration,—hanging them on a gibbet, cutting off their heads, and offering other revolting insults to their remains.—These atrocities were committed not by order of the executive government, not by an act of the legislature, but by the joint resolution of the two Houses of parliament, who were now exceeding their jurisdiction as clearly as they had ever done in the time of the Commonwealth. Hyde must have put the resolution from the woolsack, and, as Speaker of the House of Lords, have issued the directions to the Sheriff of Middlesex and the other officers of the law to carry it into effect. If he did not actually support the motion, he offered it no opposition or discountenance.*

During the sitting of the Convention Parliament, which continued about eight months, Hyde on some points had rather a difficult game to to play, for he was not sure of a majority in the House of Commons. After much trouble he succeeded in carrying an equitable settlement respecting lay property which had been alienated during the troubles. There was a strong party who thought this a favourable opportunity for re-distributing ecclesiastical property, and making a better provision for the working clergy; but Hyde successfully resisted any such interference, "showing himself," says Burnet, "more the Bishop's friend than the Church's,"† and delaying those reforms which have been introduced by Lord John Russell and Sir Robert Peel in the nineteenth century.

With regard to church government, being no doubt very sincere and conscientious in the object he had in view, he was exceedingly disingenuous and crafty as to the means he employed to accomplish it. He seems to have considered it his duty to crush the Presbyterians, and to re-establish the Church of England on the most exclusive principles. But as the Restoration was to be brought about through the Presbyterians, he held out to them flattering hopes by the Declaration from Breda; and, as they were found still to be very powerful on the King's return, ten of their most distinguished ministers, including Baxter and Calamy, were made royal chaplains, preaching in turn before the Court. Manchester and other Presbyterian Peers were introduced into offices in the household, and a modified Episcopacy, according to the model of Archbishop Usher, was announced,—to which they were ready to agree.

* 4 Parl. Hist. 158. Even the corpse of the illustrious Blake was disinterred, and removed from its place of sepulture in Henry VII.'s chapel.

† Burnet, i. 321.

A deputation of the Presbyterian clergy having delivered an address to the King, declaring their readiness to make a union with the Episcopalians, Charles, in the presence of the Chancellor, expressed his willingness to promote it; adding, that such union must be effected, "not by bringing one party over to the other, but by abating somewhat on both sides; that he was inclined to see it brought to pass, and that he would draw them together himself;"—which made a member of the deputation "burst into tears of joy, and to declare the gladness this promise of his Majesty had put into his heart."*

Conferences now took place between the divines on both sides, and a manifesto was actually published in the King's name as Head of the Church,—but the avowed production of the Lord Chancellor,—announcing the basis of the settlement. This paper, after commending the Church of England as "the best fence against Popery," and extolling the moderation of many of the Presbyterians, and asserting that on all essential points the two parties cordially agreed, specified the modifications of Episcopacy to which the King intended to assent. 1. To take away all notion of the Bishops being restored to the House of Lords, "that they do very often preach themselves *in some church of their diocese*, except they be hindered by sickness or other bodily infirmities, or some other justifiable occasion, which shall not be thought justifiable if it be frequent." 2. That such a number of suffragan Bishops should be appointed as might be sufficient for the service of the church. 3. That Bishops should not censure or ordain without the advice of their Presbyters, and that the Bishop should act not singly but as the President of an ecclesiastical board. 4. That the Liturgy should be revised by an equal number of divines of both persuasions. 5. Subscription to the thirty-nine articles was not to be required for ordination, institution, or induction, or for degrees at the Universities.

There seems no doubt that all these proceedings were with a view of amusing the Presbyterians till the Convention Parliament might be dissolved and another assembled, more devoted to the purposes of the Court. The Presbyterian leaders suspecting such an artifice, procured a select committee of the House of Commons to be appointed to frame a bill which should immediately convert the royal declaration into a law. This committee met, and for their chairman elected the famous Sir Matthew Hale, who without delay framed the bill, and introduced it. Immediately after he received an intimation from the Chancellor that he was appointed Lord Chief Baron of the Court of Exchequer. A more laudable appointment never took place in Westminster Hall; but we may well suspect that it was prompted by a desire to remove from the House of Commons the framer and supporter of this bill, as well as by a knowledge of his great learning, ability, and piety. The dependants of the Court now received instructions to vote against the bill; Morrice, the Secretary of State, made a long speech, abusing it as inconsistent with the true doctrine of apostolical succession, and it was thrown out

* Kennet, 183, 187. Calamy's Life of Baxter, 144.

on the second reading by a majority of 26 in a House of 340 members.*

The Convention Parliament was soon after dissolved. The language of the Chancellor's parting speech to the two Houses on this occasion [Dec. 24. 1660.] was most conciliating, although he had certainly made up his mind to stand at all hazards by the ultra-episcopalians. "The King is a suitor to you," said he, "that you will join with him in restoring the whole nation to its primitive temper and integrity; to its old good manners, its old good humour, and its old good nature,—good nature, a virtue so peculiar to you that it can be translated into no other language, and hardly practised by any other people."†

I have now to relate a great perplexity into which Hyde was thrown, and from which he did not extricate himself with much dignity. His daughter, Anne, having been placed, as we have related, in the family of the Princess of Orange, accompanied her mistress to Paris on a visit to the Queen Henrietta. James, Duke of York, then living with his mother, had early displayed that taste for plain women which distinguished him through life,‡ and he fell in love at first sight with Anne Hyde, who, though possessed of wit and an agreeable manner, was without personal charms.§ She had the address to draw from him first a verbal promise, and then a written contract to marry her, before she [Nov. 24, 1659.] admitted him to her bed. When she rejoined her father's family at the restoration, she was in a state of pregnancy. Notwithstanding his overacted surprise and horror when [June, 1660.] the news was afterwards publicly announced to him by the King's orders, there seems little doubt that she had communicated what had passed to both her parents, and that as he knew that this amounted in point of law to a valid marriage, they regarded her as the wife of the Duke of York. Long before any open declaration of the union, "the Earl of Southampton and Sir Anthony Ashley Cooper having dined together at the Chancellor's,—as they were returning home, Sir Anthony said to Lord Southampton, *Yonder Mrs. Anne Hyde is certainly married to one of the brothers.* The Earl, who was a friend to the Chancellor, treated this as a chimera, and asked him how so wild a fancy could get into his head. *Assure yourself*, replied he, *it is so. A concealed respect (however suppressed) showed itself so plainly in the looks, voice, and manner wherewith her mother carved to her, or offered her of every dish, that it is impossible but it must be so.*"||

* 4 Parl. Hist. 141, 152. † 4 Parl. Hist. 126.

‡ Charles said that James's mistresses seemed to have been given to him for a penance by his priests.

§ "La Duchesse de York est fort laide; la bouche extraordinairement fendue, et les yeux fort écaillez, mais très courtoise."—*Journal de Monceris*, p. 22. Count Anthony Hamilton is more courtly, saying she had "l'air grand, la taille assez belle, et beauceup d'esprit."—*Mem. Gram.* i. 149. But honest Pepys, on whom beauty was never thrown away, tells us, after having had the honour to kiss her hand, that "she was a plain woman like her mother."—i. 188.

|| Kennet's Register, 381. My Lord S. who thought it a groundless conceit

Before the birth of her child, the lady (probably prompted by her father that there might be clear evidence to prove her *status*) prevailed upon the Duke to have the marriage celebrated according to the rites of the Church of England; and this ceremony took place privately at Worcester House, the Lord Chancellor's residence,—Dr. Crowther, chaplain to James, officiating,—in the presence of Lord Ossory, who gave away the bride, and of her maid-servant for another witness. [SEPT. 3, 1660.]

The Duke now disclosed what had happened to the King and requested that he might be permitted to own her publicly as his Duchess. Charles sent for Ormond and Southampton, and desired them to consult the Chancellor. They began by telling him, "that the Duke of York had owned a great affection for his daughter, and that the King much doubted she was with child by the Duke, and that his Majesty required their advice what was to be done." According to his own statement, "he broke out into a very immoderate passion against the wickedness of his daughter,"—said, in coarse terms, he had rather she should be the Duke's mistress than his wife,—shed floods of tears,—said he would consent to an act of Parliament "for cutting off her head,"—and hoped that her presumption in aspiring to a royal alliance might be punished, in the first instance, by an immediate commitment to the Tower.*

Southampton, taken in by this ebullition, exclaimed, in the King's presence, "that the Chancellor was mad, and had proposed such extravagant things that he was no more to be consulted with."†

Hyde now affected, in the exercise of his paternal rights, to shut his daughter up in his house in order to prevent all further interviews between her and the Duke of York,—at which, however, he privately connived; for, alluding to his wife, he says that the attempt was rendered unsuccessful by "those who knew they were married." In the mean time, we learn from James himself, that, "with great caution and circumspection, he did his part to soften the King, in that matter, which, in every respect, seemed so much for his advantage."‡ Charles, with his usual careless good-nature, was disposed to acquiesce; but the *mésalliance* made his mother and his eldest sister furious. Henrietta hastened over to prevent so foul a disgrace to the royal houses of England and France, and declared that, "whenever *that woman* should be brought into Whitehall by one door, she herself would leave the palace by another, and never enter it again." And the Princess of Orange, who had recently arrived from Holland, declared that "she would never yield precedence to a girl who had stood as a servant behind her chair."

then, was not long after convinced, by the Duke of York's owning of her, "that Ashley was no bad guesser."

* Life, i. 378. I see no reason to doubt the accuracy of this statement as others have done; nor do I consider it at all inconsistent with Clarendon's subsequent attempt "to soften the King."—See Lister's *Life of Clar.* ii. 69.

† Life, i. 378.

‡ Life of James II. i. 287, which is considerably at variance with Clarendon's own representation, that he would not hear of the marriage.

The Duke of Gloucester, the youngest brother, is likewise said to have declared that "she smelt so strong of her father's green bag, that he could not get the better of himself whenever he had the misfortune to be in her presence."*

The courtiers were much puzzled as to the course they should pursue, and James himself was thought to waver,—when Sir Charles Berkeley, a profligate favourite of the Duke of York, boldly came to their aid, by affirming, with oaths, that Anne had been his mistress under a promise of marriage, and bringing forward the Earl of Arran, Jermyn, Talbot, and Killigrew, as witnesses of her loose and wanton behaviour,—"tous gens d'honneur," says the courtly author of the MEMOIRES DE GRAMMONT, "mais qui préféroient infiniment celui du Duc de York à celui de Mademoiselle Hyde." Berkeley went so far as to say that he claimed her as his own wife. Pending these false accusations Anne was taken in labour; and, while she lay in the throes of childbirth, her spiritual guide, Dr. Morley, Bishop elect of Worcester, standing by the bedside, adjured her, in the name of the living God, to speak the truth before the noble ladies who attended by order from the King. To his questions she replied that the Duke was the father of her child,—that they had been married to each [OCT. 22, 1660.] other by a priest before witnesses,—and that, having met him a virgin, she had ever been faithful to his bed. She then brought a male child into the world.

James, deeply touched by her situation, and pleased with the birth of a son, who might one day mount the throne, on her recovery showed a strong disposition to acknowledge her if her character were cleared, —when Berkeley made an open confession that the charges against her were wholly groundless, and that he had been induced to bring them forward, and to suborn the witnesses to prove them, purely out of his regard for the honour of the royal family. James, having warmly thanked him for such extraordinary proofs of his devoted zeal, hurried off to the King, and had a long interview with him.† The particulars were never made known, but the result was favourable, for he desired Berkeley and Lord Ossory to meet him in an hour at Worcester House. Thither they went, not at all foreseeing the denouement. This we have from the Memoirs of De Grammont. "Ils trouvèrent à l'heure marquée son Altesse dans la chambre de Mademoiselle Hyde. Ses yeux paroissoient mouillés de quelques larmes, qu'elle s'efforçoit de

* Burnet, i. 291, n.

† The following letter from Charles to Hyde, which must have been written a few days before, is extant in the British Museum.—*Lansdown Mss.* 1236.

"Thursday morning.

"My brother hath spoken with the Queen yesterday concerning the owning of his sonn; and in much passion she tould him that from the time he did any such thing, she would never see his face more. I would be glad to see you before you go to the parliament, that I may advise with you what is to be done; for my brother tells me he will do whatever I please."

[Superscribed]—"For the Chancellor."

retenir. Le Chancellier appuyé contre la muraille, leur parut bouffi de quelque chose. Ils ne doutèrent point que ce ne fût de rage et de désespoir. Le Duc d'York leur dit de cet air content et serein dont on annonce les bonnes nouvelles : 'Comme vous êtes les deux hommes de la Cour que j'estime le plus, je veux que vous ayez les premiers l'honneur de saluer la Duchesse d'York. La voilà.' "

Not the least wonderful part of the story is the Duchess's conduct to her calumniator. Clarendon says, "the Duke had brought Sir Charles Berkeley to the Duchess, at whose feet he had cast himself with all the acknowledgment and penitence he could express; and she, according to the command of the Duke, accepted his submission, and promised to forget the offence;" but, according to Hamilton, she went farther, and praised the conduct of Berkeley and his associates, telling them "that nothing marks more plainly the self-devotion of an honourable man than *de prendre un peu sur sa probité*,* to serve the interests of a master or a friend." All this we may believe of the daughter, when the stern old father gives us this evidently subdued account of his own complaisance:—"He came likewise to the Chancellor with those professions which he could easily make; and *the other was obliged to receive him civilly*."†

The restoration of harmony in the royal family was facilitated by the sudden death of the Princess of Orange and the Duke of Gloucester, and by a message from Cardinal Mazarine to the Queen mother, "that if she wished to be well received when she returned to the Court of France, she must be exceedingly civil to the Lord Chancellor, whom he was anxious to oblige." On the day before she left England, the Duke brought his wife to [JAN. 1, 1661.] be presented to her for the first time, and the "Queen," says Pepys, "is said to receive her now with much respect and love."‡ The new Duchess supported her rank at Court with as much ease and dignity as if she had never moved in an inferior station.

Her elevation by no means tended to the permanent stability of the Chancellor; but for a short time he was on terms of cordiality with his son-in-law, and, if possible, in higher favour with the King.

He was now raised to the peerage by the title of Baron Hyde of Hindon, and shortly after he was created Viscount Cornbury and Earl of Clarendon. On the application of the Duke of York he was likewise offered the Garter; but though several [APRIL, 1661.] of his predecessors had borne this distinction, he wisely declined it, thinking that it would bring him more envy than advantage. He accepted a more substantial proof of royal gratitude in a present of 20,000*l*. Charles at the same time made him an offer of 10,000 acres of Crown land; but this he declined, saying, that "it was the principal part or obligation of his office to dissuade the King from making any grants of such a nature (except when the necessity or

* Anglicè, "to tell a calumnious falsehood."

† Life, ii. 385, 393, 397.

‡ Pepys, i. 166.

convenience was very notorious), and even to stop those which should be made of that kind, and not to suffer them to pass the Seal till he had again waited upon the King, and informed him of the evil consequence of these grants, which discharge of his duty could not but raise him many enemies, who should not have that advantage to say that he obstructed the King's bounty towards other men, when he made it very profuse towards himself."*

CHAPTER LXXX.

CONTINUATION OF THE LIFE OF LORD CLARENDON TILL HIS ACQUITTAL WHEN IMPEACHED BY THE EARL OF BRISTOL.

Soon after the ceremony of the coronation, at which the Chancellor appeared with his lately conferred dignity of an Earl, he had to meet [May 8, 1661.] the new parliament. Before its dissolution at the end of eighteen years, it gave abundant opposition to the inclinations of the Court, but the great difficulty at first was to repress its exuberant loyalty. Although the Presbyterians had been so powerful in the Convention Parliament, only fifty-six of that persuasion were returned to the present House of Commons, and almost all the other members were taken from the hottest of the Cavaliers. The House of Lords was tempered by a considerable number of liberal and moderate Peers; but the House of Commons was, at its outset, the most intolerant, bigoted, slavishly inclined legislative assembly which ever met in England, and greatly exceeded the other House in the desire to fix the Church on the narrowest foundation, and to persecute all who should not rigidly conform to its doctrines and discipline.†

On the first day of the session, the King, having spoken at greater length than usual, still referred the two Houses for a farther explanation of his views to the Lord Chancellor. Clarendon, knowing that the ecclesiastical measures which he approved of were now completely in his power, prepared the parliament for receiving them, and took a very unfair advantage of the late mad and wicked insurrection of Venner and the "Millenarians," which was in reality as much condemned and deplored by the Presbyterians, as by the members of the Church of England. However, to check the cavalier impetuosity of the new parliament, he strongly inculcated upon them the propriety of adhering to the Act of Indemnity.

* Life, ii. 408.

† "The representatives," says Rapin, "for the most part were elected agreeably to the wishes and without doubt by the influence of the Court. This parliament may be said to be composed by Chancellor Hyde, prime minister." The insane insurrection of Venner and the Millenarians had thrown a great discredit on all dissenters.

The Commons, whether prompted by him I know not, showed their spirit by beginning the session with a most unconstitutional resolution, which was to be acted upon without the consent of the Lords or the King,—"that all their members should forthwith take the sacrament according to the rites of the Church of England on pain of expulsion from the House."* To exasperate the public mind, he certainly encouraged the Lords to join the Commons in an order that "the solemn league and covenant" (which the reigning King had signed), should be burnt by the hands of the common hangman,—along with the ordinances for the trial of the late King, for establishing a commonwealth, and for the security of the person of the Lord Protector.† No wonder that he afterwards found extreme difficulty in prevailing upon them to confirm the Act of Indemnity, notwithstanding his earnest representations that the promise of it had brought about the Restoration, and that the faith of the King and of the nation was pledged to it.‡ [May 16, 1661.]

The declaration for union and comprehension which Clarendon had drawn, and the King had published during the Convention Parliament, and Sir Matthew Hale's bill founded upon it, of course were thought of no more. The first church bill which Clarendon introduced met with very little opposition,—being to restore the Bishops to their seats in the House of Lords. The act for their exclusion had passed in times of great violence, and there was a general feeling that for the dignity of the assembly of which they had ever formed a constituent part, and for the honour and protection of the church, they should again exercise their parliamentary functions along with the hereditary nobility. [June 22, 1661.]

Next came Clarendon's famous "Corporation Act," which, contrary to the declaration of Breda,—contrary to the repeated promises of the King and the Chancellor after their return,—contrary to the plain principles of justice and expediency,—contrary to the respect and reverence due to the most solemn institution of our holy religion which was to be desecrated,—provided that no one should be elected to any corporate office, who had not, within a year before his election, taken the sacrament of the Lord's supper according to the rites of the Church of England,—laying down a rule which was soon to be applied to all civil offices and public employments. It was violently opposed, but passed by large majorities, and it continued the opprobrium of the Statute Book till, by the unwearied exertions in the cause of civil and religious liberty of an illustrious patriot, it was repealed in our own times. [Dec. 19, 1661.]

Clarendon followed up this blow by the Act of Uniformity,—which,

* 4 Parl. Hist. 208.

† Ib. 209. Such proceedings show that from the late troubles men of all parties had forgotten the limits of the constitutional powers of the two Houses. This House of Commons made orders directly on the Attorney and Solicitor-General to prosecute for high treason, without even the form of an address to the Crown.

‡ 4 Parl. Hist. 209—213.

on St. Bartholomew's day following, ejected 2000 ministers from their livings,—which, if rigidly enforced (as it was intended to be), would have established a system of persecution unparalleled in any Protestant country,—and which, notwithstanding the succeeding Act of Toleration, annual indemnity acts, and other relaxations, has had the effect of depriving the Church of England of the support of those who now form the Wesleyan and other powerful and pious persuasions, and, in the opinion of some, has considerably impaired her influence and usefulness.

[MARCH, 1662.]

It is remarkable that, although Clarendon himself presided in the House of Lords, these and all the other violent measures of the session were much less cordially received in that assembly than in the House of Commons, where it was hardly possible to restrain members from proceeding to extremities against all who had ever submitted to the authority of the Commonwealth, or questioned the infallibility of Archbishop Laud. For example, the Act of Uniformity was abundantly stringent as Clarendon himself framed it; but he tells us, that no sooner did it come down to the Commons, "than every man, according to his passion, thought of adding somewhat to it that might make it more grievous to somebody whom he did not love." The lords had set apart one-fifth of the profits of the livings from which the nonconforming clergy were to be ejected for their support,—as had been done by Elizabeth when she enforced her Liturgy, and even by the Puritanical Parliament when imposing the Presbyterian discipline;—but to this the Commons would by no means now consent;—and they insisted, that the required subscription should be extended to schoolmasters and tutors, to be enforced against them by fine and imprisonment, as they had no livings to lose. However, these alterations were not very disagreeable to the Chancellor, for, after a conference between the two Houses, he advised the Lords to agree to them.*

At the conclusion of the session was celebrated the King's inauspicious union with Catherine of Braganza. Clarendon afterwards incurred great, and I think undeserved, odium for having concurred in this match. It certainly would have been much more desirable for the sake of the national religion that Charles should have selected a Protestant Princess from Germany or the North of Europe. But to this he had an insuperable objection, and the match with Catherine seemed as little objectionable as an alliance with any other Roman Catholic family. Although the Spanish Ambassador, who wished by all means to break it off, publicly declared that the Princess never could have children, this was properly treated as a mere gratuitous and malignant assertion, and there is not the slightest colour for the imputation afterwards cast upon Clarendon, of having designedly married the King

* It is only in the present parliament, and when the Tory squires got such an ascendency in the end of this and the beginning of the following century, that I find the House of Commons more hostile to religious liberty than the Lords.

to a barren wife, that his own grandchildren might succeed to the Crown.*

He is not so easily defended for the part he took soon after in trying to persuade the Queen to consent to Lady Castlemaine, the King's avowed mistress, being one of the ladies of her bed-chamber. Catherine, having fainted away when this person was presented to her, and having resisted the shameless application of the King that she should be openly established in her family, the Chancellor at first remonstrated with him upon the monstrous impropriety of his conduct, when he received the following reply: "I wish I may be unhappy in this world and in the world to come, if I faile in the least degree of what I have resolved, which is of making my Lady Castlemaine of my wife's bed-chamber. I am resolved to go through with this matter, let what will come on it; which again I solemnly sware before Almighty God; therefore if you wish to have the continuance of my friendship, meddle no more with this business, except it be to bear down all false and scandalous reports, and to facilitate what I am sure my honour is so much concerned in; and whosoever I find to be my Lady Castlemaine's enemy in this matter, I do promise upon my word to be his enemy as long as I live. You may show this letter to my Lord Lieutenant, and if you have both a mind to oblige me, carry yourselves like friends to me in this matter."

Considering that Clarendon wished to be a contrast to Buckingham and Charles's other companions, who thought there was no harm in such violations of morality and decency,—considering that he would not allow his own wife to visit any of the royal mistresses,—that, unlike most of the other ministers of state, he refused to call upon these ladies himself, or to hold councils at their lodgings, and that he affected uniform primness and fastidiousness of demeanour in the midst of a dissolute Court,—it does seem most strange that such a mission should have been proposed to him, and still more strange that he should have accepted it. Certain it is, however, that he had several interviews with Catherine, in which he in vain tried to argue her into compliance. "The fire," he himself tells us, "flamed higher than ever. The King reproached the Queen with stubbornness and want of duty, and she him with tyranny and want of affection; he used threats and menaces (which he never intended to put in execution), and she talked loudly how ill she was treated, and that she would return again to Portugal. He replied, *she would do well first to know whether her mother would receive her*, and he would give her a fit opportunity to know that, by sending to their home all her Portuguese servants; for to them and their counsel he imputed all her perverseness."† The grave and reverend head of English judicature, the apostle of orthodoxy, the patron saint of the Church of England,—to oblige the King, after an

* From Charles's very minute and circumstantial letters to the Chancellor after meeting the Queen, it appears that he was at first highly pleased with her, and there seems to be no doubt that she afterwards miscarried.

† Life, ii. 184.

interval, again undertook the negotiation, and earnestly advised the Queen that she should submit cheerfully to that which she could not prevent. She replied, "that her conscience would not suffer her to consent to what she could not but suppose would be an occasion and opportunity of sin." Foiled by the native good sense and right feeling of this uneducated woman, who had hardly ever been out of a convent till she sailed for England, he threw up the commission, and prayed the King "that he might be no more consulted with nor employed in an affair in which he had been so unsuccessful."* Charles at last, by a series of personal insults, himself contrived to break her spirit, and to induce her to take Lady Castlemaine into special favour, so that "she was merry with her in public, and in private used nobody more friendly."

Clarendon's own solicitations are not more disgraceful to him than the reflections he makes upon her for her tardy compliance. "But," says he, "this sudden downfall and total abandoning her own greatness, this low demeanour to a person she had justly abhorred and worthily contemned, made all men conclude that it was a hard matter to know her, and consequently to serve her. And the King himself was so far from being reconciled by it, that the esteem which he could not hitherto but retain in his heart for her grew much less. He concluded that all her ormer aversion expressed in those lively passions, which seemed not capable of dissimulation, was all fiction, and purely acted to the life by a nature crafty, perverse, and inconsistent. He congratulated his own ill-natured perseverance by which he had discovered how he was to behave himself hereafter, and what remedies he was to apply to all future indispositions; nor had he ever after the same value of her wit, judgment, and understanding which he had formerly; and was well enough pleased to observe, that the reverence others had for all three was somewhat diminished."† It is impossible not to suspect from such language, that the minister participated in the exultation of the King, and that they mixed their discussions upon the dry subject of the necessity for passing the "Corporation Act" and the "Act of Uniformity" for the purpose of promoting pure religion, with a few sallies upon the vanquished prudery of the Queen, and the superior skill with which her husband had brought her to reason, when "the Keeper of his Conscience" had failed.

Nevertheless, the superior virtue of the Chancellor shone out very conspicuously in another affair which he has related to us very much to his own advantage. *Bastide*, the French ambassador, having several points which he wished much to carry for his court, particularly the restitution of Nova Scotia—in a conference with him at Worcester House, alluded very mysteriously to the privations which had been endured by him before the Restoration, to the jealous rivals who probably surrounded one so powerful, and to the expediency of his creating friends by acts of bounty,—and at last came out with the declaration "that he had brought with him a present, which in itself was small, but was only the earnest of as much every year, which should be constantly

* Life, 190. † Ib. ii. 195.

paid, and more if he had occasion to use it." His Excellency then produced bills of exchange for 10,000*l.*, which would be paid that afternoon to any persons who might be sent to receive the money. "The Chancellor had heard him with much indignation, and answered him warmly, that if this correspondence must expose him to such a reproach, he should not willingly enter into it, and wished him to tell M. Fouquet that he would only receive wages from his own Master. The gentleman so little looked for a refusal, that he would not understand it, but persisted to know who should receive the money, which should be paid in such a manner that the person who paid it should never know to whom it was paid, and that it shall always remain a secret, still pressing it with importunity till the other went with manifest anger out of the room."

Soon after the King and the Duke, who were privy to all Bastide's proceedings, called at Worcester House, and seeing the Chancellor much discomposed, asked whether any thing unfortunate had happened to him. He stated to them "with much choler," the attempt that had been made upon his virtue, whereupon they both burst out in loud laughter at him, saying, "*the French did all their business that way,*" and the King told him "*he was a fool.*" He then, as he assures us, read the King a lecture on his levity, and want of principle, "beseeching him not to appear to his servants so unconcerned in matters of this nature, and desiring him to consider what the consequences of his receiving that money, with what secrecy soever, must be; that the French King must either believe that he had received it without his own Sovereign's privity, and so look upon him as a knave fit to be depended upon in any treachery against his Master, or that it was with his Majesty's approbation, which must needs lessen his esteem of him that he should permit his servants of the nearest trust to grow rich at the charge of another Prince, who might, the next day, become his enemy." Charles smiled, and merely replied, "Few men are so scrupulous;" but before going away charged him to cherish the correspondence with the French minister, which might be useful, and could produce no inconvenience.* The bribe was shortly afterwards again offered and refused, but Clarendon consented to accept for his library a present from the French King of all the books printed at the Louvre.

Clarendon's private purity, as illustrated by this transaction, is very much to be commended; but we must deeply condemn his conduct as a constitutional minister in shortly after soliciting a bribe for his Master, and teaching him to become a pensioner of the French King. Bastide having once more made an offer to him of pecuniary aid, "for the furthering the King of England's or his own interest at the next parliament," he wrote for answer:—"We cannot have more reason to be confident of any thing than of the good temper and great affection of the parliament, which is now shortly to meet, and we have many matters of greater importance to settle with them than the procuring of

* Life of Clarendon, ii. 521—524. Burnet, i. 285.

money till the other things are done, and yet you will easily believe that the King, before that time, may be in some straights which he will not willingly own. If this should fall out to be the case, do you believe, if the King desires it, that the King of France will lend him 50,000*l.* for ten or twelve months, in which time it shall be punctually repaid?" This petition was, of course, joyfully granted.

Although the money was to be received from a foreign state without the knowledge of parliament, and was to be partly employed in bribing members of the House of Commons, and the receipt of it was necessarily to make England subservient to France, it is remarkable that Clarendon does not seem to have had the least consciousness of any impropriety in negotiating the bribe under the name of loan, and seems to have thought his own conduct as innocent as in obtaining contributions to pay Charles's tradesmen at Cologne or Bruges. But he must be considered answerable for having originated and sanctioned that shameful dependence of Charles upon Louis XIV., which is the greatest reproach of this reign. He afterwards used some big words in the dispute about our naval rights, which made the French King complain of "the hauteur of the Chancellor;" but the encourager of bribes soon found himself obliged to submit.

Clarendon was next engaged in a transaction which laid the foundation for a tremendously exaggerated charge against him, but in which I think his conduct was by no means blameless—the sale of Dunkirk. There is no ground whatever for believing that, in the course of it, he was guilty of private corruption by the secret receipt of money for his own use. The retention of the place by England was perhaps hardly desirable, from the expense it occasioned, and the temptation it offered to engage in continental wars, although it greatly flattered the pride of the nation, who delighted in this acquisition as a substitute for Calais, and it was regarded, like Berwick and Gibraltar in other times, as a proof of the prowess of England in possessing a strong fortress on the territory of a rival state. But the manner in which it was alienated in the time of profound peace, without the knowledge of parliament, for a sum of money to supply the expense of the profligate pleasures of the Sovereign, seems to me deserving of severe censure,—which falls almost exclusively on Clarendon.

So lately as the 19th of May, 1662, he himself had said in a speech in the House of Lords, "Whosoever unskilfully murmurs at the expense of Dunkirk and the other new acquisitions, which ought to be looked upon as jewels of an immense magnitude in the royal diadem, do not enough remember what we have lost by Dunkirk, and should always do, if it were in an enemy's hands." Yet in the month of October following, he signed a treaty by which Dunkirk was sold to France for five millions of livres, to be paid into the private purse of the King of England. He stoutly denies that he was the author of the measure, and Louis XIV. boasts that his ambassador, d'Estrades, dexterously put it into the head of Charles, although Charles himself said that it was first proposed to him by the Chancellor. The former supposition is

more probable, but hardly in any appreciable degree mitigates the misconduct of the minister, for he admits that he adopted it, and earnestly carried it forward. He even privately instructed the King how it was to be propounded to the Council, as we learn from a written communication between them, which is still extant.—*King.* "Am not I to break this business of Dunkirke?"—*Chan.* "Yes: and first declare that you have somewhat of importance to propose, and therefore that you will have a close counsell, and that the clarke withdraw: then state it as you resolved."—*King.* "I think the first opening of the matter must be upon Monsieur d'Estrade's desire of having the place." —*Chan.* "No: but upon severall representacions my Lord Treasurer hath made to you: Of your expenses, how farr they exceed your receipts: That you have spent some tyme in the consideracions how to improve the one and to lessen the other: That you find the expence of Dunkirke to be 130,000*l.* a yeere: You finde if it were fitt to parte with it, you could not only take off that expence, but do believe you might get a good sum of money. Aske the advice of the Board in an affayre of this moment."

Clarendon strove hard to make a good pecuniary bargain, and probably could not have got a higher price from any other customer, although Louis boasted of having overreached him by pretending that he had no ready money, and then discounting his own acceptances.* The proceeds were thrown into the lap of the Countess of Castlemaine, and the Chancellor's splendid new mansion now rising in Piccadilly, received from the multitude the name of "DUNKIRK HOUSE."

Hitherto the King had been entirely under the guidance of Clarendon; but at length a schism took place between them, and though it was only by slow degrees that the pupil could get rid of his master, all cordiality between them was gone. Charles, while in exile, had been secretly reconciled to the Catholic Church, and, in general, very little subject to religious impressions, yet at times he was desirous of making atonement for his immoralities by doing what might be agreeable to his spiritual guides. The Act of Uniformity, if strictly enforced, would operate most oppressively against the Roman Catholics. He was very willing to give them some relief, but could here expect no assistance from the Chancellor. Nicholas was removed from the office of Secretary of State, and was replaced by Sir Henry Bennet, afterwards Earl of Arlington, who "had the art of managing the temper of the King beyond all other men of that time,"† and, to please him, had himself become a Papist. The question of indulgence was now brought forward before the Council, when Bennet maintained that the King, as Head of the Church, possessed the right of suspending all penal laws in matters of religion,—a doctrine which Clarendon now controverted. In spite of his opinion, and, as he asserts, without his being consulted on the propriety of such a step, a royal Declaration, drawn by Bennet,

* Œuvres de Louis XIV. i. 175. D'Estrades, i. 286, 343.
† Burnet.

[Dec. 6, 1662.] came out, in which his Majesty was made to say, "as for what concerns the penalties upon those who, living peaceably, do not conform themselves to the discipline and government of the Church of England through scruple and tenderness of misguided conscience, but modestly and without scandal perform their devotions in their own way, he should make it his special care, so far as in him lay, without invading the freedom of parliament, to incline their wisdom next approaching session to concur with him in making such act for that purpose as may enable him to exercise, with a more universal satisfaction, that power of dispensing which he conceived to be adherent in the Crown."

When Parliament met, Clarendon was confined by illness, and the [Feb. 18, 1663.] King opened the session with a speech expressing his zeal for Protestantism, but caused a bill to be introduced in the House of Lords, by the Lord Privy Seal, to enable him to dispense with all laws requiring subscription or obedience to the doctrine and discipline of the established Church. In the first day's debate on this bill, in the absence of Clarendon, it was stoutly opposed by Lord Southampton and the Bishops, but boldly supported by Lord Ashley, Lord Robartes, and other Peers, who wished to pay court to the Sovereign. The debate was adjourned, and the result considered doubtful. Under these circumstances the Chancellor, next morning, left his sick bed, came down to the House, and made such an uncompromising and powerful speech against the bill, that the second reading was postponed, and it was never again resumed.

But his favour with the King was gone; and this being very visible, there was a general disposition among the courtiers to annoy him, which induced him to write to his friend Ormond, "I have had so unpleasant a life as that, for my own ease and content, I rather wished myself at Breda, and have hardly been able to restrain myself from making that suit."*

Pepys gives us a most lively description of the state of the Court at this time. "It seems the present favourites now are my Lord Bristol, Duke of Buckingham, Sir H. Bennet, my Lord Ashley, and Sir Charles Berkley; who, amongst them, have cast my Lord Chancellor on his back past ever getting up again, there being now little for him to do; and he waits at Court, attending to speak to the King, as others do. The King do mind nothing but pleasure. If any of the counsellors give him good advice, and move him to any thing that is to his good and honour, the other part, which are his counsellors of pleasure, take him when he is with my Lady Castlemaine, and in a humour of delight, and then persuade him that he ought not to listen to the advice of those old dotards or counsellors that were heretofore his enemies, when, God knows! it is they that, now-a-days, do most study his honour."†

Clarendon was saved from the impending peril, and enabled to continue some years longer in office, by the rash attempt of an enemy to

* April 11, 1663.

† Pepys, ii. 38.

precipitate his fall. On the 10th of July, to the astonishment of all, except a very few who were in the secret, the Earl of Bristol rose in his place in the House of Lords, and produced a paper in his own handwriting, and signed with his name, containing "Articles of impeachment for high treason and other misdemeanours against the Lord High Chancellor." He told the Lords "that he could not but observe that, after so glorious a return with which God had blessed the King and the nation, so that all the world had expected that the prosperity of the kingdom would have far exceeded the misery and adversity that it had for many years endured, and after the parliament had contributed more to it than ever parliament had done; notwithstanding all which it was evident to all men, and lamented by those who wished well to his Majesty, that his affairs grew every day worse and worse; the King himself lost much of his honour and the affection he had in the hearts of the people: that, for his part, he looked upon it with as much sadness as any man, and had made inquiry, as well as he could, from whence this great misfortune, which every body was sensible of, could proceed; and that he was satisfied, in his own conscience, that it proceeded principally from the power and credit of the Chancellor; and therefore he was resolved, for the good of his country, to accuse the Lord Chancellor of high treason." He concluded by desiring that the articles might be read. They charged that the Chancellor had arrogated to himself the direction of all his Majesty's affairs, both at home and abroad; that he had applied to the Pope for a Cardinal's cap for Lord Aubigny; that some of his friends had said, "Were it not for my Lord Chancellor standing in the gap, Popery would be introduced;" that he had concluded the King's marriage without due agreement how it should be solemnized; that he and his adherents had uttered gross scandals against the King's course of life; that he had advised and effected the sale of Dunkirk; that he had told the King the House of Lords was weak and inconsiderable; and that he had enriched himself and his creatures by the sale of offices.

The Chancellor, leaving the woolsack, made a pointed and animated defence, contending that all the charges which were not quite frivolous were false; that none of them amounted to treason; and that an impeachment for treason could not thus be commenced by one Peer against another,—upon which points he desired that the Judges might be consulted.

The Judges being summoned, pronounced their unanimous opinion by the mouth of Lord Chief Justice Bridgeman, that the prosecution was not duly commenced, and that if the charges were all admitted to be true, there was nothing of treason in them. The King, seeing the result, very irregularly sent a message to the Lords telling them that in the articles he finds many matters of fact charged, which upon his own certain knowledge are untrue. The Lords resolved, *nemine dissentiente*, that they concurred with the Judges, and they dismissed the prosecution, with a strong censure of the Earl of Bristol for the manner in

which he had brought it forward. Warrants were issued for his apprehension, and he was obliged to remain in concealment for some years.*

Clarendon's enemies were completely disheartened and confounded by this failure, and he seemed again firmly seated in power; but although the King still yielded to him the chief direction of affairs, the former friendship between them was never restored, and Charles watched impatiently for a favourable opportunity entirely to emancipate himself from his minister.†

CHAPTER LXXXI.

CONTINUATION OF THE LIFE OF LORD CLARENDON TILL HIS FALL.

[A. D. 1664.]

Clarendon was prevented by illness from being present at the opening of the session of parliament, which began in March, 1664, but he prompted Charles's address to the two Houses delivered on that occasion. The doctrine was not yet recognised that the King's speech is the speech of the minister, or he would have been liable to very severe censure for the language now uttered. The House of Commons having sat three years, objections were started that under the triennial act, to which Charles I. had assented, it had legally ceased to exist. "I confess to you, my lords and gentlemen," said the King, "I have often myself read over that bill, and though there is no colour for the fancy of the determination of this parliament, yet I will not deny to you that I have always expected that you would, and even wondered that you have not, considered the wonderful clauses in that bill, which passed in a time very uncareful for the dignity of the Crown or the security of the people. I need not tell you how much I love parliaments. Never King was so much beholden to parliaments as I have been; nor do I think the Crown can ever be happy without frequent parliaments. But assure yourselves, if I should think otherwise, *I would never suffer a parliament to come together by the means prescribed by that bill.*"

"So audacious a declaration, equivalent to an avowed design in certain circumstances of preventing the execution of the laws by force of arms, was never before heard from the lips of an English King, and would in any other times have awakened a storm of indignation from the Commons."‡ But a repealing act rapidly passed both Houses, providing merely that parliaments should not be intermitted more than

* 4 Parl. Hist. 276. † Life, ii. 256. Burnet, i. 358.

‡ Hall. Const. Hist. ii. 448. It has been suggested that the speech meant no more than that the King would take care, by the frequent calling of parliaments, that the compulsory clauses of the triennial act should never come into operation; but I think the plain meaning is, that he would set them at defiance.—See Lister's *Life of Clarendon*, ii. 289.

three years, but furnishing no remedy for the enforcement of the rule,—a provision which was found nugatory in the course of this very reign. Clarendon's ecclesiastical policy has excited so much attention, that he has escaped the blame he deserves for having been instrumental in removing this constitutional barrier, whereby he hurried on the destruction of the family whose power he wished to extend.

He now gained immense applause from the ultra-high-church party, by passing the "Conventicle Act," the object of which was wholly to prevent the public celebration of religious [MAY, 1664.] worship, except according to the ceremonies of the Church of England,—by enacting that every meeting of more than five persons, in addition to the members of the family, for religious purposes, not in accordance with the established Liturgy, should be held to be a seditious and unlawful conventicle, and that any person above sixteen years of age, on conviction before a single justice, might be punished by a fine of 5*l.* or imprisonment during three months for the first offence, 10*l.* or six months for the second offence, and 100*l.* or transportation for the third offence.

This was followed up a few months after with the "Five Mile Act," which completed the "Clarendonian Code," enacting that all nonconforming clergymen should take an oath that it [A.D. 1665.] was not lawful, upon any pretence whatsoever, to take arms against the King or against those commissioned by him, and *that they would not at any time endeavour any alteration of government in Church or State*,—and that whoever would not take this oath should be rendered incapable of teaching in schools, and should be forbidden under pain of fine and imprisonment to abide within five miles of any city corporate or borough town sending members to parliament, or any place where he had exercised his ministry. This outrageous bill, though brought in by the ministry, was opposed by Southampton, the Lord Treasurer, who declared he could take no such oath himself; for how firm soever he had always been to the Church, yet as things were managed he did not know but he himself might see cause to endeavour an alteration;* but Clarendon rebukes his friend for too great indulgence to the Presbyterians, and praises the parliament which passed this act "for entirely sympathizing with his Majesty, and having passed more acts for his honour and security than any other had ever done in so short a session."† No one can doubt his sincerity or his disinterestedness, for he was not only making himself obnoxious both to the dissenters and the Roman Catholics, but he was likewise fully aware that the line of policy he pursued on these questions was highly distasteful to the King, who was for liberty of conscience and of worship, for the sake of the religion he had embraced. We can only deeply regret the Chancellor's growing bigotry, and his utter forgetfulness of the solemn engagements into which he had entered. But this part of his conduct may endear his memory to many; for we have seen his principles

* Burnet, i. 390. † Life, iii. 1.

professed and acted upon with great applause by distinguished and honourable men of our own time, after a long experience of the blessings of toleration, to which he was a stranger.

The Dutch war was now undertaken, from commercial jealousy on the part of the English nation, and from the King's hope of diverting to private purposes a part of the supplies voted by parliament for carrying it on. To the honour of Clarendon, he, with his friend Southampton, steadily opposed it as unjust and impolitic. According to the maxims which then prevailed, he considered himself authorized, however, in remaining in office and publicly defending the policy of the Government which he privately condemned. [Nov. 1664.] Being still unable to attend in person at the opening of a new session in November, he prepared "a Narrative of the late Passages between his Majesty and the Dutch, and his Majesty's Preparations thereupon," which, after his own speech, the King handed in, and which was read in his presence. This was in the nature of a manifesto to justify hostilities, and concluded with an earnest exhortation to the two Houses to enable the King, by liberal supplies, to prosecute the war with vigour, and so to obtain an honourable peace. Conferences were held at Worcester House with the leading members of the House of Commons as to the most expedient mode of conducting the business of the government in that assembly, where motions of supply were still made by independent members, and the ostensible office of Government leader was unknown.

Charles himself used occasionally to attend these meetings. Clarendon has left us a curious account of one of them held in his own bed-chamber when he was confined by the gout, the question being, "Whether the Government should agree to a proposal, strongly supported in the House of Commons, that the money voted should be appropriated to particular services, instead of forming a general fund to be applied at the pleasure of the Crown?" Sir George Downing ventured to express an opinion in favour of this course,—which threw the old Chancellor into a great rage, and,—joined to "the extremity of the pain which at that time he endured in his bed,"—drew from him this reprimand, "that it was impossible for the King to be well served whilst fellows of his condition were admitted to speak as much as they had a mind to, and that in the best times such presumption had been punished with imprisonment by the Lords of the Council." But the King was not pleased to see a leading member of the House of Commons so put down, and took his side,—probably from the fear that, without the appropriation, the supply would not be granted, and hoping when he had once got the money to divert it to his own purposes.

The next motion in the House of Commons alarmed the Chancellor much more, being for the appointment of Commissioners to superintend the expenditure of the poll tax and other taxes. This was carried by a majority of 119 to 83, though according to Pepys, "it was mightily ill taken by all the Court party, as a mortal blow that struck deep into

the King's prerogative, and though when the division was expected the King had given order to my Lord Chamberlain to send to the playhouses and brothels to bid all the parliament-men that were there to go to the parliament presently."*

It seems very strange to us that Clarendon should advise the King to resist the inquiry into the public expenditure—which he considered as bad as any thing attempted by the Long Parliament, saying "that this was such a new encroachment as had no bottom; and that the scars were yet too fresh and green of those wounds, which had been inflicted upon the kingdom from such usurpation: and therefore he desired his Majesty to be firm in the resolution he had taken, and not to depart from it."†

Charles pretended to follow his advice by appointing Lord Ashley treasurer of prize-money, with a provision "that he should account for all moneys received by him to the King himself, and to no other person whatsoever." Clarendon remonstrated, arguing that such a patent was unprecedented; that it would cause the King to be defrauded; and that it was an offensive encroachment on the office of Lord Treasurer. He might have added, that it was an expedient to facilitate the peculation meditated by his Majesty. Charles here was "firm in the resolution he had taken, and would not depart from it, for the King sent the Chancellor a positive order to seal the commission, which he could no longer refuse."‡

In the next controversy in which Clarendon was engaged he gained great distinction with the judicious, although he was denounced by the landed interest as "a friend of free trade." [A. D. 1666.] The importation of cattle from Ireland had lately considerably increased. The landlords, headed by the Duke of Buckingham, instead of pretending to stand up as the advocates of the tenant-farmers, or of the labourers, or of the public, plainly spoke out, "that, from a fall in the price of cattle, their rents were lowered to the amount of 200,000*l.* a-year, which they could not afford." A bill was therefore brought in absolutely to prohibit such importation in future; and this was followed by another bill, equally to prohibit the importation of any cured meat or provisions from Ireland, which (according to the notions of law then prevailing) that the King might not afterwards be able to permit it by his dispensing power, was declared to be "nuisance." These bills passed the Commons by great majorities, and when they came to the Lords, the Duke of Buckingham declared that "they could not be opposed by any who had not Irish estates or Irish understandings."§ The Chancellor, however, had the courage to deliver a most admirable

* Pepys, iii. 102, 103. † Life, iii. 132.

‡ Life of Clarendon, ii. 340. We have here another instance of the notion then prevailing that any act was excused by the personal order of the Sovereign. The correlative maxims of royal impeccability and ministerial responsibility were yet imperfectly understood. Resignation instead of compliance was never thought of. —See Life of Lord Keeper Herbert, *ante*, p. 103.

§ Ossory, the son of the Lord Lieutenant, in consequence sent him a challenge, but they were both taken into the custody of the Black Rod.

speech against them, pointing out the injustice of these measures to our fellow-subjects in Ireland, and the impolicy of them with a view to English manufactures, the demand for which from Ireland must cease,—and even to English agriculture, which could not fail to prosper with the increased prosperity produced by a free interchange of commodities between the two islands. He was told, however, that the heavily-taxed English could not enter into competition in the breeding of cattle with the lightly-taxed Irish, and that without the proposed "protection" tenants would be bankrupt, labourers must come upon the parish, and the kingdom must be ruined. He was shamefully beaten in all the divisions on the bill, and all that he could effect was, in the Committee, to carry an amendment, by 63 to 47, to strike out the word "nuisance," and to insert "detriment and mischief" in its stead. The Chancellor's amendment set the Commons in a flame, and many sarcasms were uttered upom the presumption of a lawyer, who had hardly inherited an acre from his father, either in Ireland or England, pretending to speak upon such a subject. Several conferences took place between the two Houses, the King for some time, at the request of the Duke of Ormond, supporting the Chancellor; but the Squires declared that they had not yet completed the supplies, and that they would stop them at all hazards if they were to be thus dictated to by wild theorists, who had no practical knowledge of the breeding of cattle, or of the true interests of the country. Charles became alarmed lest no more money should be granted to carry on the war and to satisfy the rapacity of his mistresses; the friends of the Court in the House of Lords were instructed to agree to the contested word, and the bill received the royal assent with the clause declaring that the importation of Irish provisions was "to the common nuisance of all his Majesty's subjects residing in England."* This happened in the "*annus mirabilis*," and was of more permanent injury to the country than the Plague or the Fire of London.

I have no doubt that the part which Clarendon took on the Irish question contributed to his fall quite as much as the unfortunate termination of the Dutch war, to which it has been generally ascribed.

For the conduct of that war he was not answerable more than for its commencement. He strove to get the votes of both Houses in its favour, and supplies from the Commons for carrying it on, but these were handed over to Charles's profligate companions, and shamefully misapplied. The consequence was, that while the negotiations for a peace were going forward,—by the energy of De Witt, the Dutch fleet, under the command of De Ruyter, took Sheerness, burnt the dock-yard at Chatham, sunk several English ships of war in the Thames, sailed up the river as high as Gravesend, were expected next tide at London Bridge, and after blockading the port of London, and insulting the English coast on the German Ocean and on the Channel for some weeks, withdrew at their leisure to their own harbours. [JULY 10, 1667.] The peace of Breda soon removed the apprehension of

* Lords' Journ. Dec. 20, 29, 1666. Jan. 3, 12, 14, 1677.

invasion; but the disgrace which the nation had suffered sunk deep into the public mind, and the present times were necessarily contrasted with those when Blake humbled the power of Spain, and the English flag rode triumphant on every sea.

Other circumstances concurred to depress the spirits of the nation to an unparalleled degree. Most families were in mourning for the loss of relations in the plague; the metropolis was still lying in ruins from the great fire by which it had been destroyed in the autumn of the preceding year; foreign trade was almost extinguished; and numerous classes of labourers at home were entirely without employment or support.

Clarendon was ostensibly the prime minister, and the multitude, without giving themselves the trouble of any discrimination, passionately pronounced him the author of all their sufferings. When the alarming news arrived that the Dutch fleet was at Gravesend, they broke the windows of his new palace, and painted a gibbet on his gate, with this rude rhyme:

"Three sights to be seen,
Dunkirk, Tangiers, and a barren Queen."

This magnificent structure had risen amidst the national disasters, and he had very recently taken possession of it. Reckless charges being circulated against him of bribery from the Dutch and the Portuguese, as well as the French, its usual name of "Dunkirk House" was sometimes made to give place to that of "Holland House" and "Tangier Hall."* Even sacrilege was imputed to him because he had purchased certain materials which had been destined for the repair of St. Paul's Cathedral. Persons of superior condition sanctioned, without believing, these calumnies; and the following epigram from Andrew Marvel, though more remarkable for malignity than wit, suited the general taste, and was in every body's mouth:—

"Here lie the sacred bones
Of Paul, beguil'd of his stones:
Here lie golden briberies,
The price of ruin'd families;
The cavalier's debenture wall,
Fix'd on an eccentric basis;
Here's Dunkirk town and Tangier Hall,
The Queen's marriage and all;
The Dutchman's *templum pacis*."†

Clarendon had lately lost his firm friend and supporter, Lord Southampton; and, unfortunately, there was no sect or party in the country to stand by him when assailed by such a tide of unpopularity. The Dissenters regarded him with abhorrence, as the perfidious schemer of all the measures by which they had been oppressed. He was equally

* Pepys, iii. 251. Tangiers, part of the dowry of Queen Catherine, he had boasted of as an important acquisition to the Crown, but it had been found only a source of useless expense. The other two taunts are obvious enough.

† Marvel's Works, iii. 342.

disliked by the Catholics, as the person who defeated all the King's intentions to favour them. Even the ungrateful Bishops, he tells us, were dissatisfied with him, for not doing more to put down schism, "which produced a greater coldness from some of them towards him, and a greater resentment from him, who thought he had deserved better from their function and their persons, than was in a long time, if ever, perfectly reconciled."* The orthodox clergy generally regarded him with ill will, as the author of a proclamation in which they had been charged with drunkenness.† The unrewarded cavaliers, because he had stopped some improvident grants, ascribed to him all their disappointments. He had given mortal offence to the present House of Commons by an opinion, in which the best constitutional authorities concur with him, that the parliament, having been prorogued on the 8th of February to the 10th of October, the King could not summon it to meet at an earlier day, even on the apprehension of a Dutch invasion, and that the only legal course was to dissolve the existing parliament, and instantly to call another.

The King had never forgiven his opposition to the bill "for indulgence to tender consciences," and now rather rejoiced both at the well and the ill founded accusations brought against him. Buckingham, Killigrew, and the other wits of the Court, who were in the habit of ridiculing the Chancellor for the amusement of Charles and Lady Castlemaine, ventured more and more boldly upon the broad buffoonery of exhibiting him marching in procession with pompous gait to the Court of Chancery,—a pair of bellows and a fire-shovel being carried before him, like the great seal and the mace. These mimicries, which the King encouraged by his laughter, while he affected to reprove them, by degrees entirely obliterated his respect for his old monitor, and gave him courage to assert his own freedom.‡

[A.D. 1667.] But what most deeply affected the royal mind was, the Chancellor's conduct respecting "la belle Stuart." Charles was believed to have been more tenderly attached to this lady than to any of her sex, for whom he had ever professed admiration; but she, though admitting his approaches in a manner not very consistent with discretion, had resolutely defended the citadel of her virtue.

* Life of Clar. ii. 150. † 4 Parl. Hist. 382.

‡ The part of the Chancellor was supported by Buckingham, who is said most felicitously to have imitated "the stately stalk of that solemn personage." Colonel Titus was the mace-bearer, and carried the fire shovel on his shoulder with such gravity and self-importance, that the courtiers called out, "like master like man." The name of the actor who played "purse-bearer" is not recorded. The fame of this masque came round to the Chancellor. "For wit's sake they sometimes reflected upon somewhat he had said, or acted some of his postures and manner of speaking, the skill in mimicry being the best faculty in wit many of them had. But by these liberties, which at first only raised laughter, they by degrees got the hardiness to censure both the persons, counsels, and actions of those who were nearest his majesty's trust with the highest malice and presumption, and too often suspended or totally disappointed some resolutions which had been taken upon very mature deliberation."—*Life*, ii. 324. The ladies of the Court joined, by saying to the King as the Chancellor appeared, "Here comes your schoolmaster!"

His passion being inflamed by this resistance, he contemplated a divorce on some pretext from his present wife, and offering her his hand in marriage. So serious was he that he consulted Archbishop Sheldon on the subject, who, without giving him an answer, communicated what had passed between them to the Chancellor. There were evidently strong objections to the scheme, on the ground of justice and expediency; and these were greatly strengthened in the mind of Clarendon by the consideration that it would probably cut off the chance of his grandchildren succeeding to the throne, which had for some time been considered certain. It is believed that he went immediately to Miss Stuart, and, by strong representations of what was for her honour, and advantage, induced her immediately to consent to a clandestine marriage with the Duke of Richmond, who had long been her suitor. Charles discovering the secret, and, from an accidental meeting with Lord Cornbury, the Chancellor's son, at Miss Stuart's lodgings, suspecting the author of his disappointment,—expressed his indignation in the most unmeasured terms.* This being reported to the Chancellor, he in a very undignified manner (which considerably detracts from the merit of his boasted demeanour to the royal mistresses) denied peremptorily, in the King's presence, that he had any concern in Miss Stuart's marriage to the Duke of Richmond; and finding that the King still imputed to him the failure of his hopes, condescended to repeat the denial in writing. Charles still remained incredulous, and viewed the Chancellor with more and more dislike.

While the political horizon was blackening around him on all sides, he suffered a severe domestic affliction, which he thus records "His wife, the mother of all his children, and *his companion in all his banishment*,† and who had made all his former calamities less grievous by her company and courage, having made a journey to Tunbridge for her health, returned from thence without the benefit she expected, yet without being thought by the physician to be in any danger, and within less than three days died; which was so sudden, unexpected, and irreparable a loss, that he had not courage to support; which nobody wondered at who knew the mutual satisfaction and comfort they had in each other."‡

While he secluded himself from public business and from society, his

* The following is Ludlow's malicious account of this affair written in Switzerland: "The Chancellor sent for the Duke of Richmond, and pretending to be sorry that a person of his worth should receive no marks of his favour, advised him to marry Mrs. Stuart as the most certain way he could take to advance himself. The young man unwarily took in the bait, and credulously relying on what the old *Volpone* had said, made immediate application to the young lady, who was ignorant of the King's intentions, and in a few days married her. The King being thus disappointed, and soon after informed by what means this match had been brought about, banished the Duke with his new Duchess from the Court, and kept his resentment against the Chancellor to a more convenient opportunity."—*Mem.* 417.

† There is no reason to suppose that he was not a very good husband; but he is here *rhetorical* in his grief, for his wife was hardly ever with him during his exile, although she pressed him to send for her.

‡ Life, iii. 282.

ruin was consummated by the reconciliation of the King to Buckingham, who had been for some time in disgrace and skulking from a warrant of commitment to the Tower. This was brought about by the mediation of Lady Castlemaine, who succeeded by often calling Charles "fool," and telling him "that if he was not a fool he would not suffer his businesses to be carried on by fools that did not understand them, and cause his best subjects and those best able to serve him to be imprisoned."

As soon as Buckingham was restored to the Court, he was impatient for the formation of the new administration, which afterwards acquired such infamy under the name of the CABAL; and Lady Castlemaine and he would give the indolent King no rest till he sent a message to the Chancellor through the Duke of York, intimating that he had been secretly informed that the parliament would certainly impeach him at their next meeting, not only for his having opposed them in all those things upon which they had set their hearts, but because he had proposed and advised their dissolution, and recommending that he should appease their wrath by an immediate surrender of the Great Seal.*

[A.D. 1667.]

Clarendon expressed his regret that the King should have no better opinion of his innocence and integrity than to conclude that he could not repel such an attack, and requested an audience before returning any answer to his commands.

This request could not be refused, and the King appointed him to come to him after breakfast on the 26th of August. The approaching interview was known to all the courtiers, and excited the liveliest interest among them, as each was sanguine enough to hope some personal advantage from the expected change.

Clarendon being admitted to the royal presence, said he had no suit to make to his Majesty, nor the least thought of diverting him from the resolution his Majesty had taken, but he wished to receive his Majesty's determination from his Majesty himself, and that he therefore came to know what fault he had committed. The King disclaimed having any thing to object to him, but professed that he had adopted this resolution for his good and preservation, saying that taking the Seal from him at this time would so well please the parliament, that he might thereby be preserved, and his Majesty himself might in all other things have what he desired,—adding, that the business was already so publicly spoken of that he knew not how to change his purpose.—*Clarendon.* "Your Majesty has the undoubted right to dispose of my office as seemeth you best, and forthwith to deprive me of the Seal; but I, your Majesty's humble liege subject, have a right to defend mine honour, and I will by no means suffer it to be believed that I voluntarily give up the Seal, as confessing wrong, nor, if I am deprived of it, will I acknowledge this deprivation to be done in my favour, or in order to do me good; and so far am I from fearing the justice of the parlia-

[A.D. 1667.]

* Life, iii. 282.

ment, that I renounce your Majesty's protection or interposition towards my preservation."—*King.* "You have not enough reflected on the power of the parliament, or their hostility to you, however groundless that may be; and my own condition, after recent miscarriages, is such that I cannot dispute with them, and am myself at their mercy."—*Clarendon.* "Whatever resolution your Majesty may take in my particular, let me beseech you not to suffer your spirits to fall, nor yourself to be dejected with the apprehension of the formidable power of the parliament, which is more, or less, or nothing, as you please to make it. It is yet in your power to govern them; but if they find it in theirs to govern you, nobody knows what the end will be." He then made a short relation of the manner in which Richard II. had been bullied by his parliament, and how his misfortunes might have been prevented.

All this Charles took in tolerably good part; but when Clarendon began to warn him more directly against the bad advice of those by whom he was surrounded, and pointedly to allude to the Countess of Castlemaine, anger and impatience were visibly depicted on the royal visage. The noble historian's narrative admits that, in the course of the conversation, "he mentioned *the lady* with some reflections and cautions, which he might more advisedly have declined." After two hours' discourse the King rose and retired without announcing any resolution on the subject. The Duke of York, who was the only third party present, expressed a fear that "he was offended with the last part of it."*

Such curiosity was excited among the courtiers and mistresses by this conference, that they were eager to guess at the result of it by watching the countenances of the King and the Chancellor when it was over; but they could only discover that "both looked very thoughtful."† Great alarm prevailed among them when some days passed over without a resignation or dismissal. Sir William Coventry and Arlington saw that they could not place reliance on the unsteady and careless temper of the King, particularly as it was understood that the Duke of York had been attempting to soften his father-in-law's harsh expressions at the late interview, and to restore him to favour. They therefore strongly represented to Charles that he had proceeded too far to retire, and that he would be looked upon as a child if he should now hesitate; they taunted him with his subserviency to the Chancellor, and the awe in which he stood of him; they represented the Chancellor as a cunning old lawyer, who only sought his [A.D. 1667.]

* Life of Clar. iii. 286.

† Pepys gives a particularly lively description of the demeanour of Lady Castlemaine as the Chancellor was leaving Whitehall: "When he went from the King on Monday morning she was in bed (though about twelve o'clock), and ran out in her smock into her aviary looking into Whitehall Garden; and thither her woman brought her her night-gown, and stood blessing herself at the old man's going away and several of the gallants of Whitehall (of which there were many staying to se the Chancellor's return), did talk to her in her bird-cage: among others, Blancford telling her she was a bird of passage."—*Pepys*, iii. 334.

own ends, and who, to add to his own consequence, had kept the Crown dependent on the parliament by refusing the offer of a great permanent revenue. Not yet sure of having inspired the King with necessary courage and energy, they again set Lady Castlemaine upon him, "who nearly hectored him out of his wits." She, strange to say, asked him if this was his return for her complaisance in trying to further his suit with "la belle Stuart?"* At this [Aug. 30, 1667.] name Charles instantly asked forgiveness of her upon his knees for his delay, and sent Morrice, the Secretary of State, with a warrant under the sign-manual to require and receive the Great Seal from the present holder of it. Clarendon was employing it in sealing the formal proclamation of the Peace of Breda, and as soon as this ceremony was finished, he delivered it up with an expression of submission to the royal will, and of satisfaction that his last official act was to restore harmony between two nations who ought to be united. Morrice returned with the Seal to Whitehall, and put it into the King's hands while he still remained in Lady Castlemaine's apartments, surrounded by Clarendon's enemies,—when May, one of the basest of them, embracing his Majesty's knees, exclaimed, "Sir, you are now a King!"†

CHAPTER LXXXII.

CONTINUATION OF THE LIFE OF LORD CLARENDON TILL HIS BANISHMENT.

Clarendon bore his reverse of fortune with firmness. He put some faith in the representation that after the loss of his office no farther steps [A. D. 1667.] would be taken against him; but he was prepared resolutely to defend himself should he be assailed on the meeting of parliament.‡ As yet he had no suspicion that the King would sanction any attempt to destroy him, or to offer him farther molestation. Charles at first imputed the act of dismissing him entirely to his bad temper. "The truth is," said his Majesty in a letter to Ormond, "his behaviour and humour was grown so insupportable to myself and all the world else, that I could no longer endure it, and it was impossible for me to bear with it and those things with the parliament

* At his request she had frequently invited Miss Stuart to her parties, and left them alone together.

† Life, iii. 294. Pepys, iii. 321, 335, 338, 407.

‡ "The Chancellor believed that the storm had been now over; for he had not the least apprehension of the displeasure of the parliament, or of any thing they could say or do against him; yet he resolved to stay at his house till it should meet (without going thither, which he was informed would be ill taken), that he might not be thought to be afraid of being questioned, and then to retire into the country and live there very privately."—*Life*, iii. 835.

that must be done, or the government will be lost."* Being asked by some holding offices under the government, "whether their visiting him, to whom they had been formerly much beholden, would offend his Majesty," he answered, *No, he had not forbid any man to visit him.*

He himself gives rather a satisfactory account of the behaviour of the world to him on his first removal from office, "Many persons of honour and quality came every day to visit him, with many expressions of affection and esteem, and most of the King's servants, except only those few who had declared themselves his enemies."† [SEPT. 1667.] Evelyn at this time makes a rather less favourable entry in his Journal:—"I dined with my late Lord Chancellor, where also dined Mr. Ashburnham and Mr. W. Legge of the bed-chamber; his Lordship pretty well in heart, though many of his friends and sycophants abandoned him. But there were great apprehensions at Court that if he were spared, the storm having blown over, his influence might revive, and that, being restored to power, he might take ample vengeance on his enemies." The King's confidence was now enjoyed by the members who afterwards formed the CABAL, and who, entertaining the most criminal designs, were resolved to ruin him of whom it had been said in the hearing of some of them,—"He is a true Protestant and an honest Englishman, and while he enjoys power we are secure of our laws, liberties, and religion."‡

The King, on this occasion, for the first time, gave clear proof of that thorough want of heart and of principle which appeared more and more distinctly, and which, notwithstanding his outward good qualities, ultimately rendered his reign inglorious, and his memory contemptible. He zealously joined in the persecution of Clarendon, who, from boyhood, had been his adviser, companion, and friend, and against whom he could urge nothing except "defect of temper." Notwithstanding the first professions of good-will, an intimation was soon given "that the King would take it ill from all his servants who visited the late Chancellor, and it appeared more every day that they were best looked on who forbore going to him."§

But he was not to escape with the mere punishment of being frowned on by the Sovereign and deserted by all who aspired to promotion at Court. A parliamentary impeachment was resolved on,—not to bring him to the scaffold, but to drive him for ever from his native country;—and although it was well known that nothing could be proved against him amounting to high treason, or any serious crime, entire reliance was placed on the prejudices of the parliament and of the nation.

The fall of Clarendon was certainly hailed with almost universal satisfaction, and farther joy was expressed when the plan was announced of bringing him to justice for his supposed delinquencies.

On the 10th of October parliament reassembled, [OCT. 20, 1667.] and the King alluded to the dismissal of Clarendon

* Ellis's Original Letters, iv. 30. † Life of Clar. iii. 295.
‡ By Lord Southampton in council, shortly before his death.
§ Life, iii. 295.

in these words, which constituted the whole of his speech:—"When we last met here, about eleven weeks ago, I thought fit to prorogue the parliament to this day, resolving that there should be a session now, and to give myself time to do some things I have since done, which I hope will not be unwelcome to you, but a foundation for a greater confidence between us for the future."

It had been hitherto the custom merely by a general vote to thank his Majesty for his gracious speech, without an address according to modern fashion, re-echoing all the sentiments of the speech, and specifically concurring in them. But on this occasion, as a preliminary to farther proceedings against the Ex-chancellor, there was a joint address of both Houses, thanking his Majesty for the recent measures of his government, and thus concluding:—"We are grateful for your Majesty's care in quickening the execution of the Act against the importation of foreign [Irish] cattle, and more especially that your Majesty hath been pleased to displace the late Lord Chancellor, and remove him from the exercise of public trust and employment in the affairs of state."*

The King made the following answer, dictated by Buckingham:—"I thank you for your thanks. I am glad the things I have done have given you so good satisfaction; and for the Earl of Clarendon, I assure you I will never employ him again in any public affairs whatsoever."

[Oct. 26. 1667.] The motion for impeachment was made in the House of Commons by Sir Edward Seymour, a man able, ambitious, and "supposed to decline no means that tended to his advancement." No orator ever addressed a more favourable audience, and he fully availed himself of his advantage by bringing forward charges in vague and declamatory language to suit the passions of every section of the House; but the indignation excited by the sale of Dunkirk, by the alleged plan of keeping up a standing army, and by the disgrace at the conclusion of the Dutch war, was nothing compared to the fury which burst forth when he came to "the importation of Irish cattle," and the crowning accusation—"that the Earl of Clarendon, in dissuading the assembling of parliament on an earlier day than that to which it had been prorogued, although an invasion of the realm was threatened by a foreign foe, had audaciously and treasonably spoken these scandalous and abominable words of and concerning the representatives of the people in the Commons' House of Parliament—*Four hundred country gentlemen are only fit to give money, and do not understand how an invasion is to be resisted!*"†

Sheridan's famous speech in the House of Commons against Warren Hastings was not more successful; and the only question was, how the prosecution should be conducted? At last "a committee was appointed

* "The Lords at first objected to this address, but the King said 'it should go worse for the Chancellor' if his friends in the Lords opposed it; and he sent a message to the Archbishop of Canterbury that he should, in his Majesty's name, command all the Bishops' bench to concur in it, and if they should refuse it he would make them repent it."—*Life of Clar.* iii. 303. This may be considered the commencement of the *constitutional* career of the CABAL.

† North's Lives, ii. 51.

to look into ancient precedents of the method of the proceedings of this House in cases of impeachment for *capital offences*," which was followed by a committee "to reduce into heads the accusations against the Earl of Clarendon."

This committee, consisting of his bitterest enemies, in their report proposed seventeen articles of impeachment most preposterously vague and absurd. I can only give the first as a specimen. "1. That the Earl of Clarendon hath designed a standing army to be raised and to govern the kingdom, thereby advised the King to dissolve this present parliament, to lay aside all thoughts of parliament for the future, to govern by a military power, and to maintain the same by free quarters and contribution." By the others he was charged with having said that *the King was a Papist in his heart, or popishly affected, or words to that effect*,—with receiving money for passing illegal patents,—with causing divers persons to be illegally imprisoned, and sent to remote islands and garrisons,*—with procuring his Majesty to pay debts for which he was not liable,—with receiving money from the Vintners' Company for enhancing the price of wines,—with gaining a great estate more rapidly than was possible by lawful means,—with introducing arbitrary government into the plantations,—with advising and effecting the sale of Dunkirk, together with the artillery and stores, and for no greater value than the artillery and stores were worth,—with arbitrary proceedings at the council table,—with illegally causing writs of *quo warranto* to issue,—and with betraying his Majesty in negotiations relating to the late war.

But some of the country gentlemen who had such a horror of Clarendon for his defence of the importation of Irish cattle and provisions, seeing that this was not made a substantive charge, doubted whether any of those brought forward amounted to high treason,—and an opinion was expressed that the prosecution should only be for "high crimes and misdemeanours,"—so as not to affect his life.

The motion that he should be impeached for high treason on the first charge was nevertheless persisted in, and, wonderful to relate, after a two days' debate it was negatived by 172 to 103. The others taken *seriatim* had the same fate, till that one was reached which charged him with betraying his Majesty in negotiations,—when Lord Vaughan, eldest son of the Earl of Carberry, moved the addition of these words, "and discovered and betrayed his secret counsels to the enemy,"—as,

* This was the best founded charge. As yet little regard was paid to personal liberty; there were arbitrary commitments by the Council and the Secretary of State, and writs of *habeas corpus* were disregarded. The long imprisonment of Colonel Hutchinson, which caused his death, may be taken as an example. Large sums were given occasionally to be discharged from illegal imprisonment, and there is reason to apprehend that a portion of these sometimes found their way to the Lord Chancellor.—See *Pepys*, iii. 220, 221, 285. Lister's *Life of Ld. Cl.* ii. 500. Men's minds were not yet accustomed to regular and constitutional government, and in this transition state very arbitrary proceedings occasionally took place without much notice.

serting that he was credibly informed that this could be made out by a person of honour, whose name he for the present had good reasons for concealing. The words were inserted, and the motion that the Earl of Clarendon on this charge be impeached for high treason was carried by 161 to 89.

Still they were ashamed to exhibit these articles specifically at the bar of the House of Lords, and Seymour, going up there, preferred the impeachment in the following general words: "The Commons assembled in parliament having received information of divers traitorous practices and designs of a great Peer of this House, Edward Earl of Clarendon, have commanded me to impeach the said Earl of treason and other high crimes and misdemeanours, and I do here, in their names and in the names of all the Commons of England, impeach Edward Earl of Clarendon of treason and other high crimes and misdemeanours. I am further commanded by the House of Commons to desire your Lordships that the Earl of Clarendon may be sequestered to safe custody. They further commanded me to acquaint your Lordships that they will, within a convenient time, exhibit to your Lordships the articles of charge against him."*

This is one of the many occasions in our constitutional history when the Lords, with all their faults, have shown much more regard to the principles of justice and liberty, than the inflamed and prejudiced elected representatives of the people. After four days' debate it was resolved, "that the House would not comply with the desire of the House of Commons concerning the commitment of the Earl of Clarendon and sequestering him from parliament, *because the House of Commons have only accused him of treason in general, and have not assigned or specified any particular treason.*"

This resolution being communicated to the Commons, a conference took place between the two Houses in the Painted Chamber, when the Commons insisted on their right to demand the commitment of a Peer on a general impeachment for treason, citing the recent cases of the Earl of Strafford, Archbishop Laud, and Lord Keeper Finch, and greatly praising the gravity and wisdom of the early proceedings of the Long Parliament. The Lords answered, that these precedents had occurred in times of great heat and violence; that if they ought always to commit upon impeachment by the Commons, they were rather executors of process than Judges; that, *excellent as was the composition of the present House of Commons*, there might be a House of Commons inclined to faction, who, by the abuse of the power now claimed, might make dangerous inroads upon the justice and ancient government of the kingdom, terrify and invade the highest jurisdiction, and indeed bring the House of Lords to as small a number as they please to leave unaccused; that, as all inferior courts and magistrates were bound to examine upon oath the particular crimes wherewith a man is charged before depriving him of his freedom, the parliament should be careful herein to give a

* 4 Parl. Hist. 586.

good example; and that the Petition of Right having declared that no man ought to be imprisoned or detained without being first charged with something to which he might make answer according to law, it would be a plain infraction of that rule to commit upon generals, which do not allow answer or defence.

Each House adhered to its resolution,—even after another conference, which was "free," and in which the question was debated warmly between the managers.

The Commons then resolved, "that the Lords not having complied with the desires of the Commons for the commitment of the Earl of Clarendon, and sequestering him from parliament upon the impeachment of this House, is an obstruction to the public justice of the kingdom, and a precedent of evil and dangerous consequences."*

This was the most direct and seemingly the most dangerous collision which had ever taken place between the two Houses. "It is much to be feared," wrote an intelligent observer, "all future intercourse between them will stop. The consequence none can foresee. A worse position of affairs this government does not admit, his Majesty wanting a considerable sum for the payment of the navy and other debts; the people full of complaint for their late miscarriages; our neighbours arming, and we exposed to all kinds of hazards from abroad and at home."

What was to be done? a new creation of Peers to carry a ministerial measure, was a *coup d'état* which had not then been thought of, and if a dissolution had taken place, notwithstanding the unanswerable reasoning of the Lords, the public mind was in such an inflamed state that the commitment on a general accusation would have been demanded by a new and more violent House of Commons.

It was suggested by the courtiers that Clarendon might extricate all parties from this dilemma by withdrawing beyond the seas; but he scorned the proposal. Some of his own friends, thinking that it would be the wisest course for himself, represented to him the danger in which he was, and spread reports to reach him that the Duke of Albemarle, his old enemy, was now plotting against him; that he was to be arrested in his house by a guard of soldiers, and carried to the Tower; that directions had been given to the Lieutenant of the Tower to treat him with severity; and that the intention was to keep him always in prison without bringing him to trial. Still he remained firm, urging that his flight would be interpreted as a confession of guilt,—would be a triumph to his enemies,—and would bring lasting disgrace upon himself.

Being told that his withdrawing would be grateful to the King, he took a step the real motives for which it is very difficult to fathom. Perhaps he expected that Charles would disclaim any such wish, or might be melted by a personal appeal to him; though still it is impossible to account for his topics and his tone. He wrote a letter to the King, in which, imputing his Majesty's displeasure to his having brought

* 4 Parl. Hist. 388—390.

about the marriage between the Duke of Richmond and "la belle Stuart," he again denied all previous knowledge of it. He expressed his earnest desire, at all times, to act according to his Majesty's wishes, and to regain his favour, and thus concluded:—"I do most humbly beseech your Majesty, by the memory of your father, who recommended me to you with some testimony, and by your own reflection upon some one service I may have performed in my life that hath been acceptable to you, that you will, by your royal power and interposition, put a stop to this severe prosecution against me; and that my concernment may give no longer interruption to the great affairs of the kingdom; but that I may spend the small remainder of my life, which cannot hold long, in some part beyond the seas, never to return."

This letter was put into the King's own hand by Bridgman, the new Lord Keeper. As soon as Charles had perused it, he burned it in the flame of a candle, merely saying, with an air of *nonchalance*, "There is something here which I do not understand; but I wonder Lord Clarendon doth not withdraw himself." If any thing could palliate the King's abandonment or persecution of his old friend, it would be this letter, in which the writer directly imputes such a base motive (though it might be the true one) for the royal displeasure, and pretty plainly intimates that he himself should have been pleased to aid his Majesty's designs on Miss Stuart, whatever they might have been.

The laconic and insulting response, reported to Clarendon by the Lord Keeper, rather induced him to remain in England at all hazards. The next move was a visit to him from the Bishop of Hereford, who intimated, that if he would quit the kingdom, to prevent the mischief which must arise from the difference between the two Houses,—the Bishop would undertake, "upon his salvation," that he should not be interrupted in his journey, nor be afterwards prosecuted, or suffer during his absence in honour or in fortune. Clarendon demanded written evidence of the King's wishes, and a pass signed by the King, lest his enemies should arrest him as a fugitive from justice. The Bishop sent him word that the pass could not be granted, from the apprehension of giving displeasure to the parliament, but that he might as securely go as if he had it. Ruvigni, the French ambassador, to induce him to fly, assured him of kind treatment in France. But while he could reckon on a friendly majority in the House of Lords he considered himself safe, and was resolved to remain at his post.

He became alarmed by being told that, for the purpose of convicting him capitally, parliament was to be prorogued, and that an indictment for treason would then be found against him by a grand jury, upon which he would be tried before the Lord High Steward and a small number of Peers, selected by the Government from among his enemies. This turned out to be no idle rumour. A positive resolution had been taken to force him to fly, or to proceed to extremities against him. [Nov. 29, 1667.] The King, at some risk of infection, went to the Duke of York, who had been confined by the smallpox, and told him to advise his father-in-law to be gone,

—blaming him for not giving credit to what had been said to him by the Bishop of Hereford. The Duke immediately sent a message to Clarendon, by the Bishop of Winchester, "that it was absolutely necessary for him to be gone, and that he had the King's word for all that had been undertaken by the Bishop of Hereford."

The Duke having continued always to behave to him with kindness and sincerity, he thought there was no longer room for hesitation, and he resolved to set off for France that very night. His friend, Sir John Wolstenholme, agreed to have a boat ready to receive him at Erith. As soon as it was dark the Ex-chancellor got into his coach at Clarendon House with two servants, and, guarded by his two sons and two or three friends on horseback, he passed rapidly, by Temple Bar, through the city, crossed London Bridge, and proceeded along the right bank of the river to his place of embarkation. At eleven o'clock in the night of Saturday, the 29th of November, 1667, he hurried on board the boat which was waiting for him at Erith, and bid a last adieu to his native country. Evelyn gives us a very interesting account of a visit he had paid him in the morning of the same day, before his communication from the Duke of York:—"I found him in his garden at his new-built palace, sitting in his gout wheele chayre, and seeing the gates setting up towards the north and the fields. He looked and spoke very disconsolately. After some while deploring his condition to me, I took my leave. Next morning I heard he was gone. I am persuaded," adds Evelyn, "that had he gon sooner, though but to Cornbury, and there lain quiet, it would have satisfied the parliament. That which exasperated them was his presuming to stay and contest the accusation so long as it was possible; and they were on the point of sending him to the Tower."*

I must express my surprise, that he did not persist in his resolution still to remain and face the accusation. He owed no sacrifice to the King for the purpose of extricating the government from the embarrassment in which they were placed by this scandalous prosecution; he had a reasonable safeguard from violence in the firmness of the House of Lords; and he might have braved the threat of sending him to the Tower, and bringing him to trial before a packed tribunal.

Although he does not expressly mention that he was influenced by the wishes of his children, I cannot help believing that the Duchess of York joined with her husband in advising him to withdraw; and that his sons, who had gallantly defended him in the House of Commons, in their pious fears exaggerated to him the danger arising from the blind fury of that assembly.

He probably hoped, ere long, safely to return; and, at all events, he confidently relied upon the royal pledge so solemnly given that no farther steps would be taken against him while he was in exile.

* Evelyn, ii. 299.

His flight was greatly condemned at the time; and "made a greater impression upon many worthy persons, to his disadvantage, than any particular that was contained in the charge that had been offered to the House."*

He left behind him a letter, addressed to the Lords, which was delivered by Lord Cornbury to the Earl of Denbigh; [Dec. 3, 1667.] and by him presented to the House. This contained a vindication of his conduct. To the charge of having suddenly accumulated great wealth, which weighed most with the public, he said he never received from his office more than its just emoluments, as sanctioned by Lords Ellesmere and Coventry, who had escaped all reproach; that he had received from the King presents, in all amounting to 26,000*l.*, and some small grants of land, having refused to accept much greater; that his whole estate, after payment of his debts, would not amount to 2000*l.* a year; and that, instead of having a large hoard of ready money by him, since the time the Seals were taken from him he had lived upon the produce of his plate. With respect to the management of public affairs, he answered, that after the parliament at Oxford, his credit had greatly declined; that since the introduction of Arlington into the Council, he had been little attended to; that it was notorious he had opposed the Dutch war; and that he had not, during the whole of the last year, been above twice alone with the King, who had preferred other advisers. He solemnly denied that he had ever, "upon all the treaties or otherwise, received the value of 1*s.* from all the Kings and Princes in the world, except the books of the Louvre prints, sent him by the Chancellor of France." He accounts for his present position from having made enemies in the faithful discharge of his public duties, and thus concludes: "I most humbly beseech your Lordships, that I may not forfeit your Lordships' favour and protection by withdrawing myself from so powerful a prosecution, in hopes I may be able by such withdrawing, hereafter to appear and make my defence; when his Majesty's justice, to which I shall always submit, may not be obstructed nor controlled by the power and malice of those who have sworn my destruction."†

Arlington, who was here so distinctly pointed out as the author of the late pernicious measures, spoke vehemently against this letter, denouncing it as "a libel," and asserting that "there was not one word of truth in it." Buckingham, at whom it distinctly glanced, moved that it should be communicated to the Commons as "a scandalous and seditious paper," and, himself being appointed to be the messenger, at a conference between the two Houses he performed the task in his usual strain of insult and ridicule: "The Lords have commanded me to deliver to you this scandalous and seditious paper sent from the Earl of Clarendon: they bid me to present it to you, and desire you in convenient time to send it to them again; for *it is a style which they are*

* Life, iii. 300. † Life, iii. 346.

in love with, and therefore desire to keep it,"—mimicking the tones and gestures of the Ex-chancellor.

The Commons resolved that it should be burnt by the hands of the common hangman, and sent up this resolution to the Lords, who so far forgot their dignity as to concur in it. This pitiful mode of showing spite against writings which perhaps could not be refuted, continued in fashion for a century afterwards.

By way of preparation for the solemnity on this occasion, the address was printed and cried through the streets, with this opprobrious title: "News from Dunkirk House, or Clarendon's Farewell to England; in his seditious Address to the Right Honourable the House of Peers, on the 3d of Dec. 1667." The burning took place in Palace Yard in the presence of the Sheriffs of London and Middlesex, amidst tremendous shouts of applause from the populace.

The Commons added a resolution on their own sole authority as to the obligation of the Lords to commit on a general impeachment for treason,—with this qualification, that "the Lords may limit a convenient time for bringing the particular charge before them." But this struggle put an end to general impeachments,—and ever since, upon an impeachment voted by the Commons before a demand of commitment, the different charges, articulately framed, have been delivered in writing at the bar of the House of Lords.

According to the agreement which was to be observed "on the salvation of the Bishop of Hereford,"—Clarendon having withdrawn beyond the seas, was not to suffer farther in his honour or his estate. But unfortunately for the devoted Prelate, the enemies of the Ex-chancellor, with the full concurrence of the King, immediately introduced a bill in the House of Lords, which, under pretence that he had voluntarily fled from justice, enacted, "that unless he returned and surrendered himself before the 1st of February next, he was to be banished for life, disabled from ever again holding any office, subjected if he afterwards returned to England to the penalties of high treason, and rendered incapable of pardon without the consent of the two Houses of Parliament." An amendment to extend the day for his appearance to the 10th of February, was negatived, and the bill was carried by a considerable majority, all the influence of the Government being exerted to support it. A strong protest against it was signed by several Peers, on the grounds that it was unjust to punish a man for withdrawing, against whom no legal charge had been brought, and for whose appearance there had been no regular process or order; that the day mentioned in the bill was so near at hand, that he had no fair opportunity of surrendering and taking his trial; and that the bill encroached on the royal prerogative by depriving the King of the power to pardon.

When it came down to the Commons, the objection chiefly made to it was that it was too mild,—and it was carried only by a majority of 65 to 42,—the minority consisting mostly of men who thought that the impeachment for high treason ought not to be stopped, and if there was to be legislation, it should be by a present and absolute attainder.

Charles supported the bill in all its stages,—the only symptom of shame which he displayed in the breach of all his duties and engagements being, that he gave the royal assent to it by commission, and not in person.

[Dec. 19, 1667.]

The name of the Ex-chancellor was immediately erased from the list of the Privy Council and from every public commission in which it appeared.*

CHAPTER LXXXIII.

CONCLUSION OF THE LIFE OF LORD CLARENDON.

The victim of these arbitrary proceedings was now in France, experiencing by turns kind and harsh treatment, as *Louis* XIV. was guided by his own inclination to ostentatious generosity, or by the apprehension of giving offence to the King of England. Although the Ex-chancellor had set sail from Erith with a favourable wind, he was soon driven back by a tempest, and it was only after beating about in the mouth of the river Thames and in the English Channel three days and nights that he reached Calais. From thence he applied to the French Government for permission to reside at Rouen. Louis wrote him a letter with his own hand, acceding to his request, and informing him that orders were issued to the Governors of Calais, Boulogne, and Montreuil, to treat him as a person whom their King esteemed, and to afford him a sufficient escort; that a coach should meet him at Abbeville to conduct him to Rouen, and that *there* every thing should be done to render his residence safe and agreeable. He accordingly proceeded on his journey, and was received with great distinction as he passed through Artois and Picardy. At Montreuil, the Duc d'Elbœuf, the governor, lent him his own carriage and horses as far as Abbeville. There he found the equipage promised by Louis, which was to convey him to Rouen. He preferred the route by the sea shore, that he might revisit some of the scenes of his former exile, and he spent a few days very pleasantly at Dieppe. His spirits now rallied, and he almost became reconciled to his fate, thinking of the repose he was about to enjoy under the protection and patronage of the *Grand Monarque*. But proceeding on his journey,—when about half-way between Dieppe and Rouen, a gentleman attended by two servants rode up to his carriage window, and delivered a letter to him from Louis, merely desiring him to give credit to whatever the bearer of it should communicate, and to obey his orders. This was M. Le Fonde, who held a considerable office at Court, and

[Dec. 1667.]

[A. D. 1667.]

* Life, iii. 370.

who then with much formality declared, in the name of the King his Master, that "inasmuch as any favour shown in France to the banished Conte de Clarendon would give offence to his ally the King of England, and might cause a breach between the two Crowns, his most Christian Majesty must desire the said Conte de Clarendon to quit his dominions immediately; but, that Mons. le Conte might want no accommodation for his journey to the frontier, he, the bearer of this message, was commanded to do himself the honour of accompanying him thither." So Clarendon found himself a prisoner in the custody of M. Le Fonde. He asked and obtained permission to proceed to Rouen. Whether by accident or design, the coach which conveyed him was three times overturned before reaching that place, and he was very seriously bruised. He arrived at Rouen late at night, exceedingly ill. Next day he was quite unable to move, and a courier was sent off to Paris to mention his condition to the French Government, and to ask for fresh instructions. The former harsh command was reiterated, that he should immediately quit the French territory. "The fatigues of the journey, and the bruises he had received from the falls and overturnings of the coach, made him not able to rise out of his bed, and the physicians who had taken much blood from him exceedingly dissuaded it."* M. Le Fonde still urging his departure, he dictated a letter to the French minister, intimating his submission to the orders laid upon him; that he had selected Avignon, under the rule of his Holiness the Pope, for his place of residence; and that he would proceed to it with all possible expedition,—but requesting that he might remain a short time longer at Rouen, waiting his recovery, and that, on account of the state of his health, he might be permitted to stop occasionally on his journey to recruit his strength, and particularly a few days at Orleans. [Jan. 1668.] The reply was, that he must immediately set off for his destination, and that in travelling to Avignon he would only be permitted to stop every tenth day.

A few hours after, he received letters from his sons informing him of the steps which had been taken against him in his absence, [A.D. 1668.] and containing a copy of the Act by which he was to be banished for life, and branded as a traitor, unless he surrendered himself by the 1st of February. There was just time for him, by expeditious travelling, to be in London by that day. Instead of proceeding to Avignon, he resolved to face his enemies, and not to submit to the cruel sentence which, in violation of the royal pledge, had been conditionally pronounced upon him. Ill as he was, he immediately set off for Calais, —which he was allowed to do on his representation that he should from thence quit France, in obedience to the royal mandate. But when he arrived there, after a fatiguing journey in the depth of winter, he was so much worse that his life was considered in danger, and bleeding was deemed necessary to allay his fever. The weather was tempestuous, and he could not embark. While he thus lay on a bed of sickness, a

* Life. iii. 355.

peremptory order arrived from the French government, that under no circumstances should Lord Clarendon be allowed to remain a day longer at Calais. "The King your Master," said he to the messenger, "is a very great and powerful Prince, but he is not so omnipotent as to make a dying man undertake a journey. I am at your King's mercy, and must endure whatever it is his pleasure to inflict. He may send me a prisoner to England, or cause me to be carried dead or alive into the Spanish territories, but I will not commit suicide by voluntarily attempting what it is impossible for me to perform." He requested the Lieutenant Governor of Calais, and the President of the Court of Justice, with whom he had formerly been acquainted, to visit him, and they seeing his deplorable condition, and fortified by a certificate from the physicians who attended him, that he could not be removed without danger to his life, made a representation which obtained a permission for him to remain at Calais till he should recover from his illness.

This concession was probably facilitated by rumours of the "Triple Alliance" which had just been concluded by Sir William Temple and De Wit, for curbing the ambition of the French King, now beginning to alarm Europe. When the certain news of this treaty was received, the French minister sent a despatch to Clarendon assuring him "that [A.D. 1668.] he had the same respect for him which he had always professed to have in his greatest fortune; that it was never the purpose of his Christian Majesty to endanger his health by making a journey that he could not well bear; and therefore that it was left entirely to himself to remove from Calais when he thought fit, and to go to what place he would."

The day for his surrender was gone by; he was now a banished man for life, and he could not set foot on English ground without being liable to be immediately executed as a convicted traitor. He resumed his intention of settling at Avignon; but for many weeks he was confined to his bed at Calais, and it was not till the spring had made some progress that he was able to begin his journey. Having bought a large easy coach from his friend the President, who had continued to show him [Ap. 3, 1668.] great attention, he then set forward for Rouen, where, in the hurry of his departure, some of his effects had been left. Louis, smarting under the restraint of the Triple Alliance, to which Charles, although his virtuous fit was nearly over, still reluctantly adhered, Clarendon on his arrival there found fresh assurances of the good-will of the French government, and permission to reside (with the exception of Paris) in any part of France.

He still looked to Avignon as the place of his residence, but resolved in his way thither to try to recruit his strength by taking the waters of Bourbon. The first night after he left Rouen he stopped at Evereux,—where he encountered a peril which strongly shows his unpopularity at this time with almost all classes of Englishmen, and their disposition to attribute all their grievances to his misconduct. A company of English seamen who had been employed in the French artillery lay in the town, and being told of the arrival of Lord Clarendon the famous Chancellor,

whom they had heard spoken of in their own country as the author of the bad measures which had enabled the Dutch to get to Chatham, and the person who had applied the money voted for the support of the navy to the embellishment of Dunkirk House, flocked round his inn, declaring "that there were many months' arrears due to them from England, and that they would make him pay the whole before he should leave the place." On account of his lameness he was lodged in a room on the ground floor. The door being strongly barricaded, they attempted to enter by the window; but they were some time kept at bay by Le Fonde, who still attended him as a commissioner on the part of the French government, and by the devoted efforts of his own servants. From a discharge of fire-arms Le Fonde and one of the servants were wounded and fell,—when the ringleader entered at the window, threw open the door, and admitted the rest of the rioters. The Ex-chancellor was found sitting on his bed, and was knocked down and stunned by a blow on the head from the flat side of a broad-sword. Fortunately they differed among themselves what they should do with him,—some crying that they would instantly kill him, and others that they would carry him prisoner into England. In the mean time they rifled his pockets, broke open his trunks, and plundered his goods. The ringleader protested against stabbing him in his bedroom as conduct unworthy of English seamen, and proposed that a gibbet should be erected in the court yard, in the fashion of a yard-arm, from which he should be suspended. To this they all assented by acclamation, and they were dragging him through a corridor to the intended place of execution when their commanding officer arrived, accompanied by some of the magistrates and the city guard,—and their victim was rescued from impending death. He obtained an asylum in the house of the Duc de Bouillon. After a foolish dispute between two sets of French functionaries respecting jurisdiction, the outrage having been committed in the suburbs of the town, the rioters were seized, and the ringleader and two others of the most culpable were afterwards broken on the wheel.

It turned out that on this occasion, though much frightened, he had not received any serious hurt, and he was soon able to prosecute his journey to Bourbon. There he remained some weeks, deriving great benefit to his health from the waters, from the soothing attentions of the company, and from the tranquillity he was at last enabled to enjoy. He made another agreeable rest at Lyons, and about midsummer he arrived at Avignon. Here he was well received by the dignitaries and magistrates, and he had reason to be satisfied with the cheapness of living and the beauty of the surrounding country. But he began to think it might have a strange appearance that he who had always been such a zealous Protestant, should voluntarily choose to live and die under the temporal dominion of the Pope. He was attracted by the climate and society of Montpellier. After an experimental visit he established himself there, and during the two years that it was his residence, he enjoyed as much happiness as was consistent with separation from his country, his family, and his friends. He was treated with great respect and civility by the

Governor, the inhabitants of the place, and all strangers of distinction who visited it, and he was solaced by talking the English language and of English affairs with the Earl and Countess of Mordaunt, who were much attached to him, and from the lady's delicate state of health were at this time resident at Montpellier.

He had to struggle against bodily pain and weakness by which an ordinary man's mental activity would have been subdued. "His indisposition and infirmity, which either kept him under the actual and sharp visitation of the gout, or when the rigour of that was abated, in much weakness of his limbs when the pain was gone, were so great that he could not be without the attendance of four servants about his own person; having in those seasons when he enjoyed most health and underwent least pain, his knees, legs, and feet so weak that he could not walk, especially up or down stairs, without the help of two men."*

But his love of literature was again his great support. He now proceeded to complete his "History of the Rebellion," which had been so long suspended by his political and judicial occupations; he wrote his "Justification" against the charges contained in his recent impeachment; and he began his "Autobiography," which was to contain a narrative of his private life, with some account of public affairs after the Restoration. He likewise composed a number of Essays in imitation of Lord Bacon's, and went on with his devotional work on the Psalms, which he had begun at Jersey. In the midst of all these occupations he took great pains to improve himself in the French language, of which he had never been quite master, not having been familiar with it when he was young,—and he began the study of Italian, "towards which he made competent progress."†

He carried on an affectionate intercourse by letter with his family, and he was now perhaps enjoying life more than among the excitements, disappointments, and mortifications of ambition,—when he heard that his daughter, the Duchess of York, had openly embraced the Romish religion. He was dreadfully shocked, but hoped to bring her back to the true Protestant faith. With this view he wrote a long and elaborate letter, in which he found himself obliged to depart from the high-church ground he had so boldly taken up against the Presbyterians, and on which he had successfully resisted the scheme of comprehension. "The common argument," he tells her, "that there is no salvation out of the church is both irrational and untrue. There are many churches in which salvation may be obtained as well as in any one of them, and were many even in the apostolic time; otherwise the apostles would not have directed their epistles to so many several churches, in which there were different opinions received and very different doctrines taught. There is indeed, but one faith in which we can be saved—the steadfast belief of the birth, passion, and resurrection of our Saviour. *And ev ry church that receives and embraces that faith is in a state of salvation.*" If he had still dwelt on the apostolical succession, the neces-

* Life, iii. 368. † Life, iii. 373—376.

ity for receiving the sacraments from a priest episcopally ordained, and the duty of implicitly believing with childlike docility all that the church teaches, her Royal Highness might have sent a triumphant answer to her father, and shown him that, on his own principles, if he did not abjure the Protestant heresy, his soul was in great peril, and he must renounce the covenanted mercies of the gospel.

Clarendon at the same time despatched a similar missive to the Duke, her husband. Choosing to assume that his Royal Highness still remained a steady Protestant, (although there was now little doubt with the public of his having been reconciled to Rome, and of the Duchess having gone over to please him,) the Ex-chancellor condoled with him on the grief he must suffer from her defection, and, (as he thought,) with a refinement of policy, pointed out the danger to the Catholics from such an open conversion, as they would be sure to be treated with increased rigour. But in spite of these pious efforts James soon after professed himself to be a Roman Catholic in the face of the world, and the Duchess steadily adhered to that faith till her death.

This event took place in March, 1671, and the intelligence of it plunged her father into the deepest affliction. He was tenderly attached to her, and he had complacently anticipated the time (although he could not hope to live to see it) when she would sit upon the throne, and teach her children who were to reign after her to honour and to defend his memory. His grief was soon after aggravated by hearing of the death of her only surviving son, and he trembled lest her daughters, Mary and Anne, should, like their brothers and sisters, be doomed to an early grave.

He was so overset that he could no longer follow his usual occupations, and change of scene being recommended to him, he retired from Montpellier to Moulins. [JULY, 1671.]

Here he was consoled by the society of Lawrence, his second son, who with some difficulty obtained permission from the English government to visit him. His spirits gradually rallied, and he resumed his studies. Having finished his "History of the Rebellion," he wrote to Charles II., and after trying to soften him with an account of his desolate condition in exile, he says, "I have performed a work under this mortification, which I began with the approbation and encouragement of your blessed father, and when I had the honour to be near your Majesty, and which, if I do not overmuch flatter myself, may be for the honour of both your Majesties.* He concluded by entreating, in pathetic terms, "that an old man, who had served the Crown above thirty years in some trust and with some acceptation, might be permitted to end his days, which could not be many, in his own country and in the society of his children. He entertained sanguine hopes that this appeal would be successful, and he at the same time sent directions for the management of his house and lands in England in the tone of one who expected soon to revisit them. But Charles, by the advice of

* Clar. Pap. iii. Supp. xi.

Clifford, Arlington, Buckingham, Ashley, and Lauderdale, having broken the triple alliance, shut up the Exchequer, tried to favour popery, and fallen into complete dependence upon the French King, could not bear the idea of again seeing the face of his ancient monitor, under whose guidance his measures and his character had been comparatively respectable. One might have supposed that he would have felt curiosity to peruse the great historical work to which he himself had formerly contributed some materials; but now, absorbed in present pleasure, he was wholly indifferent to the opinion entertained of his father or himself by the present age or by posterity.

The disappointment to Clarendon was severe, but he bore it with fortitude. His great props were literature and religion. On the 8th of June, 1672, he commenced the Continuation of his Life, which he entitled "Reflections upon the most material Passages which happened after the King's Restoration to the Time of the Chancellor's Banishment, out of which his Children, for whose Information only they are collected, may add some important Passages to his Life as the true Cause of his Misfortune." During a visit to Pezenas he steadily went on with it, and he finished it on his return. At Moulins he also wrote "A View and Survey of Hobbes's Leviathan;" "Animadversions on a Controversy between Dr. Stillingfleet and Mr. Crossy respecting the Catholic Church;" and "An Historical Discourse upon the Jurisdiction assumed by the Popes." He even contemplated a new history of England, "that it may be more profitably and exactly communicated than it yet hath been."*

But in the midst of these labours he perceived that his bodily strength gradually declined, and that each fresh access of his constitutional disorder, the gout, became more formidable. As his career was visibly drawing to a close, his desire to revisit his native land constantly increased; and that he might at least have the satisfaction of being nearer it,—in the summer of 1674 he removed from Moulins to Rouen, destined to be his last place of abode. Here he made another effort upon the obdurate heart of Charles, by a petition that he might be allowed to die among his children. "Seven years," he observed, "was a time prescribed and limited by God himself for the expiation of some of his greatest judgments, and it is full that time since I have with all possible humility sustained the insupportable weight of the King's displeasure. Since it will be in nobody's power long to prevent me from dying, methinks the desiring a place to die in should not be thought a great presumption."† But Charles would not even vouchsafe to return him an answer.

After this disappointment he abandoned all hope in this world, and prepared for a better. On the first of December he, with difficulty, wrote his will in these words :—

"I, Edward, Earl of Clarendon, do order this to be my last will and

* Life, iii. 481. † Clar. Pap. iii. supp. xliv.

testament. Imprimis, I commit my soul to God, and make the executors of this said last will my two sons, Henry Viscount Cornbury and Lawrence Hyde, Esq., and commend to them the care of my servants, who have behaved themselves very carefully and honestly to me. And likewise recommend their sister, Frances Hyde, and their brother, James Hyde, Esq., to their kindness, to whom I am able to leave nothing but their kindness. Item, I give and bequeath to my said two sons all my papers and writings of what kind soever, and leave them entirely to their disposal, as they shall be advised, either by suppressing or publishing, by the advice and approbation of my lord Archbishop of Canterbury and the Bishop of Winchester, whom I entreat to be the overseers of this my will. And that they would be both suitors to his Majesty on my children's behalf, who have all possible need of his Majesty's charity, being children of a father who never committed fault against his Majesty.

"CLARENDON."

His eldest son had come over to Rouen to attend him on the news of his danger, and was with him to the last. We have no further particulars of his death-bed. He expired on the 9th of December, 1674, in the 65th year of his age.

By an arrêt of the French government during a temporary difference with England, the "*droit d'aubaine*" was remitted in favour of the heirs of the Earl of Clarendon, if he should die in France,—and this was still respected. His body was sent over to his native country, and on the 4th of January, 1675, was privately interred on the north side of Henry VII.'s chapel in Westminster Abbey—an honour conceded, I presume, on account of his alliance to the royal family. But although his two grand-daughters successively reigned in England, no monument was ever erected to his memory, and there is no inscription even to point out the spot where his dust reposes.

He himself has left us more lasting memorials of his existence than marble or brass could furnish; and he certainly is a memorable personage in our annals, both by his actions and his writings. Without the original genius and comprehensive grasp of intellect which distinguished his predecessor, Bacon, he had an acute and vigorous understanding, which, united with unwearied industry, made him a man of most respectable acquirements, and admirably adapted him for the scenes through which he was to pass. In ordinary times he would have been known during his life merely to his own family, his personal friends, and his profession, and would have been forgotten as soon as the tomb had closed over him; but amidst civil strife and revolutions, he was qualified to take a leading part, and to influence the opinions and the conduct of mankind. For delicacy of observation and felicity of delineation of the characters of contemporaries, he is almost without a rival.

In his conduct we have much more to commend than to censure. His early career was without a blemish; and it is only in considering

how few would have done the same, that we can properly appreciate his merit in seeking to gain distinction by the liberal practice of his profession, instead of retiring to obscure indolence upon the competency left him by his father,—and in readily renouncing that profession when it had become to him a source of large emolument, that he might be free to discharge his duties as a member of the legislature at the great crisis of his country's fate. His efforts at the opening of the Long Parliament for the punishment of the Judges, and the correction of abuses, showed him to be a sincere friend of constitutional freedom; and if he went too far in supporting the attainder of Strafford, he might well be excused, from the general enthusiasm then prevailing, and the countenance of the virtuous men with whom he acted. He went over to the King at a time when the disinterestedness of his motives was above all suspicion; and the sound advice which he then gave, if it had been followed, would either have warded off a rupture, or would probably have insured success to the royal cause. We shall nowhere find better illustrated, than in the state papers he then wrote, the sound principles of representative government and limited monarchy. In his first exile we are called upon to forgive the jealousy and hatred he displayed towards his rival, Lord Keeper Herbert—which we can do, while we admire his fidelity, his industry, and his fortitude.

We see him on a more trying scene, when in possession of supreme power; and I think it is impossible to defend or much to palliate the gross breach of his solemn engagements to the Presbyterians—his extreme illiberality in matters of church discipline—his long-continued negotiation with the Queen to induce her to take the King's mistress into her establishment as one of her ladies of honour—his earnest disavowals of having counteracted the King's designs on Miss Stuart—his affected indignation at the announcement of his daughter's marriage with the Duke of York, and his pretended wish that she were his mistress—his encouraging the King to receive money privately from France—his sale of an important fortress, added by the Commonwealth to the dominions of England, for the purpose of contributing to the expense of the King's profligate pleasures—his repeal of the triennial act, without any effectual provision to limit the duration or to prevent the intermission of parliaments—or his violent opposition to the appropriation of the supplies and the revision by parliament of the public expenditure. But, on the other hand, we must bear in mind his steady adherence to the promise of indemnity, notwithstanding the odium he thereby incurred with the dominant party—his opposition to the plan of rendering the crown independent of parliament by the grant of a large permanent revenue—his confirmation of the abolition of military tenures and re-enactment of other good laws of the Commonwealth—his opposition to the Dutch war—his steady support of the reformed religion, at the risk of losing the favour of the King—and his efforts to stem the tide of open immorality, which, flowing from the court, was threatening to corrupt the manners of the whole nation. If disposed to blame him very severely for remaining in office when his advice was not followed

and he disapproved of the measures of the government, we should remember that then a unanimous cabinet was not considered by any means necessary,—persons once appointed to the offices of Treasurer, or Chancellor, or Secretary of State, no more thought of voluntarily resigning than a common law judge,—and, till the King dismissed them, they went on doing the duties of their departments and giving their opinions at the council table when required to do so, leaving the sovereign to decide when his ministers were divided. In forming a judgment of Clarendon's administration we must likewise always bear in mind what a character he had to manage in Charles II.,—and we should look to that King's subsequent conduct under other counsellors.*

* Thus Clarendon writes confidently to Ormond:—"The worst is, the King is as discomposed as ever, and looks as little after his business; which breaks my heart, and makes me and other of your friends weary of our lives. He seeks for his satisfaction and delight in other company, which do not love him so well as you and I do. I hope it will not last always."—Sept. 9, 1662. "My friends and my enemies deal alike unreasonably with me. As the latter impute all the ill that is done to the Chancellor's contriving, so the former impute the not doing what they think is good to the Chancellor's not advising it. But, you know what will be, will be, in spite of the Chancellor." "That which breaks my heart, is, that the same affections continue still—the same laziness and unconcernedness in business, and a proportionable abatement of reputation; and this makes a greater impression upon my mind and spirits than heretofore, by my not having that faithful bosom I had to discharge myself into, nor that friend, nor any other who is ready to bear that part in speaking plainly and honestly in proper seasons."—Oct. 25, 1662.

Immediately after the Restoration, the king and his minister were on a footing of the most perfect familiarity, and in their private communications Charles entirely laid aside the style and forms of royalty. When they could not conveniently meet, they corresponded like two intimate and equal friends, in a written dialogue, which I suppose was carried on by a Cabinet red-box. I subjoin some specimens:—

Chancellor. "I praye be pleased to give an audyence to my Lord Brughall, who will say many thinges to you of moment, and I thinke with duty enough. If you will give him leave to attende you to morrow morninge at 8 of the clocke, I will give him notice of it."

King. "You give appointments in the morning to others sooner than you take them yourselfe; but if my Lord Braughall will come at 9, he shall be wellcome."

Chancellor. "Ther is one of your Attorney-Generalls in North Wales lately deade: it is a place of small profitt, but of great moment to your service, and to be in the handes of a lawyer of cleere reputation. The Judges recommend to me one Mr. Walcott, a man of good name, and one of the best families in those parts. Is it your pleasure to bestow the office upon him?"

King. "With all my harte."

Chancellor. "I have now settled the affayre between my Lord Pembroke and his wife, that they vex one another no more by beinge togither, and I thinke they are now fayrely parted.

"If I could this twelvemonth have gotten any tyme to have spoken to you I should have asked whether you intende to allow Dick Belin any thinge to lyve upon, or that he shift as he can.

"Not by pencôn, but say what he shall have, and then way may be found out of the privy purse or by Fox to pay it."

King. "Let Fox pay him 400*l.* a yeare."

King. "Will you not be heere to-morrow at Councell, about the businesse of Ireland?

His judicial duties he seems to have discharged to the satisfaction of the public. Burnet says, "He was a good Chancellor, only a little too

"It will be likewise necessary for you to meete me at the Generall's on Friday before Councell about the businesse of Portugall.

Chancellor. "I shall attende you in both places if I am able, the contrary whereof I do not suspecte. You have a world of other businesse to, which must be settled at my Lord Treasurer's."

King. "When can we meete there?"

Chancellor. "I am afrayd not till Sunday. Will you put us to deliver our opinions in this matter this night? It will take much tyme. My Lord Dorchester must be very longe, and my Lord Anglesey as longe; since I presume they will differ."

King. "If those two learned persons could be sent to supper, we might dispatch it now; but by my Lord of Dorchester's face, I feare his speech will be long, which will be better for a collation than a supper."

King. "What do you thinke of my Lord Barkeley's being Deputy of Irelande, if we can finde no better?"

Chancellor. "Do you thinke you shall be rid of him by it? for that is all the good of it."

King. "The truth of it is, the being rid of him doth incline me something to it: but when you have thought round, you will hardly find a fitter person."

Chancellor. "You have a Serjeant at Lawe's place voyde by the death of Serjeant Glanvill. All your councell at law hold Sergeant Keelinge fitt to succeede. He is a person of eminent learninge, eminent suffringe, never wore his gown after the rebellyon, but was always in gaole; besydes he is at least as able as any man in Englande."

King. "Let it be done."[1]

King. "The Secretary has a letter from Lord Retherfort, which takes notice of the rumore of parting with Dunkirke."

Chancellor. "If you had leisure this afternoone why should you not appointe your brother, my Lord Treasurer, and the Generall, to attend you at 4 or 5 of the clocke at Worcester House, that wee might ther agree on the whole methode of carryinge on this affayre?"

Chancellor. "Is not my Lord Viscount Hereford Lord-Lieutenant for Herefordshyre?"

King. "No: for I find by most of the gentlemen of that county that he is not at all beloved; and besides I think the man *herb John*."

Chancellor. "Why did you once resolve it? which he knowes; he is honest, and all men say worth the cherishing."

Chancellor. "I thinke it but just to give my Lord Worcester such papers as may manifest his debts."

King. "Let my Lord Worcester have his accounts and papers—which I doubt not will bring forth a new cheate."

Chancellor. "As troublesome as you take him to be, he is an angell in comparison of his wife and his brother John."

The very familiar terms on which they were, appears still more clearly from the letters which Charles wrote to Clarendon when he met the Queen at Portsmouth, and was married to her; but I cannot copy them *salvo pudore*. They rather countenance the statement of Burnet, that the Chancellor's conversation was not always

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[1] Keeling had won Clarendon's heart by drawing the Act of Uniformity. Afterwards, when Chief Justice, distinguished himself by the famous rhyme in contempt of the *Magna Charta*.—See Lord Campbell's *Speeches*, p. 339.

rough; but very impartial in the administration of justice;" and Pepys, having heard some cases decided by him, makes this entry in his journal. "I perceive my Lord is a most able and ready man." These testimonies are not very high as to legal capacity, but show strongly the favourable impression made on the public by his manner and deportment. In the Court of Chancery he was kept right by his assessors. The judicial business of the House of Lords was then exceedingly small. From the long discontinuance of parliaments in the reign of Charles I. and the disturbances which had prevailed for the twenty years which followed the meeting of the Long Parliament the House of Lords had ceased to be regarded as the highest court of justice in the kingdom, as it had formerly been; and in Clarendon's time, luckily for him, it had hardly recovered its appellate jurisdiction. He was the only Law Lord in the House, and his opinion on legal questions would not have carried with it much weight.

He admirably performed one of the most important duties of a Chancellor by raising the best men he could find to the bench. The aggregate of evil inflicted on the community by a bad judicial appointment is so enormous, that it would be less mischievous to the public if a Chancellor were to accept a bribe for pronouncing an unjust decree, than if, yielding to personal favour or party bias, he should make an incompetent Judge. Hale was supposed to owe his promotion to a desire to take from the House of Commons the active supporter of the Comprehension Bill; but Bridgeman, Twisden, Foster, and Windham, with respect to whom there could be no suspicion of improper motive, were placed by his side.

Clarendon likewise has the merit of having listened favourably to the suggestion of Hale and other enlightened jurists, who were for following up the law reforms begun under the Commonwealth; and under his auspices, on the 5th of October, 1666, the House of Commons appointed "a Committee to confer with such of the Lords, the Judges, and other persons of the long robe who have already taken pains and made progress in perusing the statute law; and to consider of repealing such former statute laws as they shall find necessary to be repealed, and, if expedient, of reducing all laws of one nature under such a method as may conduce to the more ready understanding and better execution of such laws,"*—an exploit still remaining for the glory of some future Lord Chancellor.

He was charged in his impeachment with the sale of offices, and with receiving money for passing illegal patents, but nothing like judicial corruption was established against him.

He certainly put the Great Seal to proclamations which we should consider beyond the power of the prerogative,—as that all who had served in the army of the Commonwealth should retire above twenty

very grave or modest; for the King and he must have been at least as free over their wine. After their quarrel about the "*Indulgence*," there was no private correspondence between them, and they hardly ever met except at the council table.

* Com. Jour. Oct. 5, 1666.

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In his conduct we have much more to commend than to censure. His early career was without a blemish; and it is only in considering

Clifford, Arlington, Buckingham, Ashley, and Lauderdale, having broken the triple alliance, shut up the Exchequer, tried to favour popery, and fallen into complete dependence upon the French King, could not bear the idea of again seeing the face of his ancient monitor, under whose guidance his measures and his character had been comparatively respectable. One might have supposed that he would have felt curiosity to peruse the great historical work to which he himself had formerly contributed some materials; but now, absorbed in present pleasure, he was wholly indifferent to the opinion entertained of his father or himself by the present age or by posterity.

The disappointment to Clarendon was severe, but he bore it with fortitude. His great props were literature and religion. On the 8th of June, 1672, he commenced the Continuation of his Life, which he entitled "Reflections upon the most material Passages which happened after the King's Restoration to the Time of the Chancellor's Banishment, out of which his Children, for whose Information only they are collected, may add some important Passages to his Life as the true Cause of his Misfortune." During a visit to Pezenas he steadily went on with it, and he finished it on his return. At Moulins he also wrote "A View and Survey of Hobbes's Leviathan;" "Animadversions on a Controversy between Dr. Stillingfleet and Mr. Crossy respecting the Catholic Church;" and "An Historical Discourse upon the Jurisdiction assumed by the Popes." He even contemplated a new history of England, "that it may be more profitably and exactly communicated than it yet hath been."*

But in the midst of these labours he perceived that his bodily strength gradually declined, and that each fresh access of his constitutional disorder, the gout, became more formidable. As his career was visibly drawing to a close, his desire to revisit his native land constantly increased; and that he might at least have the satisfaction of being nearer it,—in the summer of 1674 he removed from Moulins to Rouen, destined to be his last place of abode. Here he made another effort upon the obdurate heart of Charles, by a petition that he might be allowed to die among his children. "Seven years," he observed, "was a time prescribed and limited by God himself for the expiation of some of his greatest judgments, and it is full that time since I have with all possible humility sustained the insupportable weight of the King's displeasure. Since it will be in nobody's power long to prevent me from dying, methinks the desiring a place to die in should not be thought a great presumption."† But Charles would not even vouchsafe to return him an answer.

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tually exercised, of great importance and emolument, but now a mere feather in his cap. Even this the Parliament would not allow him to wear in their sight. When the treaty of Uxbridge was to take place, Bridgeman was named one of the King's Commissioners, and was designated by his new title; but the Westminster potentates having voted that all grants under the Great Seal were void after it had been carried to Charles at York in 1642, would not recognise his promotion, and insisted that he should appear in the commission and passport as plain "Orlando Bridgeman."*

When the treaty began, the grand question as to the militia, or the power of the sword,—upon which the rupture took place, and which ever prevented a settlement,—was assigned to Bridgeman and three other great lawyers, Lane, Gardiner, and Palmer. They here clearly had right on their side, and when they made the demand of the power of the sword by the parliament appear to be without law or justice, their opponents never offered to allege any other argument than "the determination of the parliament," from which they could not recede. The parliamentary Commissioners seem to have admitted privately that the law was against them, but to have urged that the command of the army was absolutely necessary for their security, and that the refusal of it could proceed from nothing but a resolution to take the highest vengeance upon them for their resistance.†

The subsequent struggle in the field having terminated in the triumph of the parliament, and Oxford having capitulated to Fairfax, Bridgeman first withdrew to his house in the country, and then came privately to London. [A.D. 1646.] But he would not recognise the usurped authority of the parliament so far as to put on his gown and plead, even before a Rolle or a Hale. During the Commonwealth he practised as a conveyancer and chamber counsel. Lord Holt, in referring to this period of his life, says, "My Lord Chief Justice Bridgeman was a very studious gentleman; and, though he kept to his chamber, yet he had an account brought him of all that passed in the Courts." He looked forward to better times, but thought it more politic to trust to the growing discontent of the nation than to engage in any of the premature royalist plots, which ended in ruining the authors of them, and strengthening the existing government.

When Monk marched to the South, Bridgeman crept out from his hole, and exerted himself actively, though cautiously, to further the Restoration. [A.D. 1660.] Another representative having been returned for Wigan after his expulsion, he does not seem to have attempted to resume his place in the House of Commons on the last re-establishment of the Long Parliament (or the "Rump,") and the re-admission of the secluded members. One would have expected to find

* The same objection was made to the designation of Colepepper as Master of the Rolls, Hyde as Chancellor of the Exchequer, Lane as Chief Baron, and Gardiner as Solicitor General.

† Hist. Reb. b. viii.

him returned with other distinguished cavalier lawyers to the Convention Parliament, but his name does not appear in the list of its members. Nevertheless, he must have been in communication with the Court, and high in the confidence of Hyde; for two days after the King's return to Whitehall a writ was issued under the Great Seal for calling him to the degree of a Serjeant at law, and in two days more he was created Lord Chief Baron of the Court of Exchequer.* He was soon after appointed to sit as Speaker of the House of Lords, in the absence of the Lord Chancellor.

In October, the same year, he presided at the trial of the regicides. We find handed down to us some of the flowers of his eloquence, in charging the grand jury on this occasion. Having explained to them that the treason consisted "in *imagining* and *compassing* the King's death," and stated that the prisoners had gone farther, and "*executed* him on a scaffold in front of his own palace," he said, "Certainly this is so much beyond the imagination and compassing, as it is not only laying the cockatrice's egg, but brooding upon it till it hath brought forth a serpent." After stating that the crown of England is an imperial crown, he asks, "What is an imperial crown? It is that which, as to the coercive part, is subject to no man under God. The King of Poland has a crown; but what is it? At his coronation he is conditioned with the people, that if he shall not govern them according to such and such rules, they shall be freed from their homage and allegiance; but the crown of England is, and always was, an imperial crown,—not subject to any human tribunal or judicature whatever. As to the person of the King, he is not to be touched. *Touch not mine anointed.* It is true (blessed be God!) we have as great liberties as any people have in Christendom, but let us owe them where they are due; we have them by the concession of our Princes. Our Princes have granted them, and the King now grants them." Having stirred up their indignation, by a rhetorical description of the King's death, he thus concludes,—"No story that ever was,—I do not think that any romance—any fabulous tragedy,—can produce the like. You are now to inquire of blood—of royal blood—of sacred blood—blood like that of the saints under the altar, crying, *Quousque, Domine.* This blood cries for vengeance; and it will not be appeased without a bloody sacrifice. He that conceals the guilt of blood takes it upon himself—wilfully, knowingly takes it upon himself; and we know that when the Jews said, *Let his blood be on us and our seed*, it continued and continues to bring a curse unto them and their posterity to this day."†

I cannot say there is any bad law here, but the political doctrines promulgated must have drawn a disagreeable gaze on the Duke of Albemarle, the Earl of Manchester, Lord Hollis, and others, who, having been active Commonwealth's men, had the bad taste to be present as Judges on their *collaborateurs*. It has been said that when the indictments were found by the Grand Jury, and the prisoners were

* June 2, 1660. Dug. Or. Jur. 1660.
† Manning's Report of the Serjeant's Case. 5 St. Tr. 998.

tried *seriatim* before Bridgeman, "he distinguished himself by his acrimony, intemperance, and inhumanity;"* but though I do not agree in the panegyric upon him, that "he was a man of great learning and *greater temperance*,"† I do not discover much to censure in his conduct on these trials. He was bound to require the parties to plead guilty or not guilty, before they addressed the Court. The observation which General Harrison was beginning, "Divers of those who sat upon the Bench were formerly as active——" though true, could not be decently permitted. The defence, that the King's trial was under an Ordinance of the House of Commons, required to be overruled; and the suggestion that "the whole proceeding had been approved by God," might well justify strong remarks upon its criminality. We should think it rather strange if a Judge were to tell the Jury that a capital charge was so clearly proved that they ought to find a verdict of *guilty* without leaving the box; but even fair Judges were not so squeamish in those days, and the case was made out in law, and in fact, beyond all possibility of doubt. He checked the applause which burst out at the verdict, stating that it was more fitting for a stage play than a Court of Justice.‡

As soon as the trials were over he was made a Baronet, and promoted to be Chief Justice of the Court of Common Pleas. "While he presided in this Court," says Granger, "his reputation was at the height; then his moderation and equity were such that he seemed to carry a chancery in his breast. His own reports of his decisions certainly show that he was a very learned, acute, and painstaking Judge.§

Presiding in a court which merely decided questions of property between party and party, he had few opportunities of showing his political bias, but such as occurred he very eagerly improved. His most celebrated judgment is that in the case of Benyon *v.* Evelyn,‖ which has endeared his memory to the enemies of parliamentary privilege. In an action for a debt, which was clearly barred by "the Statute of Limitations," the defence was likewise grounded on a resolution of the House of Commons with respect to the commencement of an action against a member during the sitting of parliament. The Chief Justice, who, as we have seen, thought that all our liberties were *octroyed* or granted by the Crown, and wished that they should still be considered as depending on the good pleasure of the reigning sovereign,—of course highly disapproved of the notion that there was any privilege constitutionally inherent in the Houses of Parliament. He had himself been expelled the House of Commons by an abuse of an assumed

* Serviens ad Legem, 181. † Siderfin, 3. ‡ 5 St. Tr. 947.

§ Vol. iii. 361. In the arguments of Chief Justice Bridgeman methinks I find that *eviseeratio causæ*, as the Roman orator calls it, an exact anatomy of the case, and a dexterous piercing into the very bowels of it; and it was no small commendation of an eminent professor of our law, and one that afterwards was advanced to the highest office a person of that profession can be capable, "*That he always argued like a lawyer and a gentleman.*"—*Preface to Carter's Reports.*

‖ Bridg. Rep. 324.

privilege; he had observed the great advantage which parliament had derived from the doctrine of privilege in its struggles with the Crown during the last reign; and, though parliament was at present abundantly subservient, he had the sagacity to foresee that similar struggles might again arise. His object therefore was to aim a blow at privilege, by very unnecessarily and wantonly denying that any weight was to be attached to resolutions of the two Houses respecting their privileges, and asserting that parliamentary privilege was to be defined, limited, and determined by the King's Judges. The judgment in favour of the defendant being clearly right on other grounds, it could not be brought before any other tribunal; and no member of parliament being affected by the result, it could not be noticed by either House. In truth, not the slightest particle of public attention seems to have been bestowed upon it at the time; but being recently discovered, it has placed Lord Chief Justice Bridgeman on a pinnacle, and we are now called upon to honour him as the champion of our laws and liberties.*

That he was not a Judge of very enlarged views we may conjecture from his celebrated construction of the clause of MAGNA CHARTA, providing for the due administration of justice. The Court of Common Pleas, in the reign of Charles II., was held in Westminster Hall, near the great northern gate, and the Judges, counsel, attorneys, suitors, and bystanders being much annoyed by the cold and the noise, there was a general wish that the Court should be removed to an adjoining recess, from which the voice of the Serjeants, when eloquent, might still have been heard in the Hall; but the Chief Justice would by no means agree to this innovation, "as the great Charter enacts that the Court of Common Pleas, instead of following the King in his progresses, shall be held *in aliquo certo loco;*" so that, after the proposed removal, all the proceedings of the Court would be "*coram non judice*, and void."†

During the illnesses of the Lord Chancellor, the Chief Justice Bridgeman frequently sat Speaker in the House of Lords, but he seems to have been very little connected with any political party or leader, and not to have aimed at any higher promotion. He was not at all mixed up in the intrigues which ended in the removal of Clarendon; and Lady Castlemaine, Buckingham, Ashley and Arlington, only thought of him as a person who might be safely trusted to hold the Great Seal till they could fix upon some one likely more actively to promote the measures or jobs which they had in contemplation.‡ It was arranged that he

* See Lord Campbell's Speeches, p. 316.

† North's Life of Guilford, i. 185. This decision rather supports Erasmus's account of English lawyers: "Doctissimum genus indoctissimorum hominum."

‡ In a very artful letter written on the very evening of Bridgeman's appointment by Arlington, to break the news to the Duke of Ormond, Clarendon's fast friend—after stating that the King had sent for the seals by Secretary Morrice, he says, "and this night his Majesty hath given them to my Lorde Bridgeman *with whome hee sayes hee will advise concerning his Lop.'s successour.* I cannot but still be of yᵉ opinion that not only the publique affaires will bee bettered by this change, but that my Lord Chancellʳ will find greater ease by it than he seemes yet to believe hee shall."

should still retain his office of Chief Justice of the Common Pleas, and, in fact, he did retain it near a year after he was appointed Lord Keeper.*

The ceremony of delivering the Great Seal to him took place at Whitehall, on Saturday the 31st of August, 1667; and "on the Wednesday following, in full council, he took the oaths of supremacy and allegiance, and of the office of Lord Keeper, and of a Privy Councillor."† He had the long vacation to prepare himself for the duties of his new office, but not expecting to hold it, or being insuperably unfit for it, he never made any progress in his Equity studies, and all accounts represent him to have turned out a most execrably bad Equity Judge. We find constant complaints of him, even amidst compliments to Clarendon his predecessor, and Shaftesbury who succeeded him—who, notwithstanding their utter ignorance of equitable and legal principles, contrived, by *representing* the part more skilfully, to delude many into an opinion of their sufficiency.

On the first day of Michaelmas term he went in grand procession, attended by the Judges and King's Counsel in coaches, from Serjeant's Inn to Westminster Hall; and "soe soone as he came to his place in the midst of the Court of Chancery, standing, tooke the oathe of the office of Lord Keeper of the Great Seale of England, the booke being held by the oldest Master of the Chancery, in the absence of the Master of the Rolls, being sick, who, had he been present, ought to have held it."‡

The high expectation entertained by some from seeing an experienced lawyer appointed to this great judicial office was immediately disappointed. He departed from the discreet practice of Lord Clarendon, always to have Judges and Masters in Chancery on the Bench with him to assist him, and, though very desirous to do what was right, he gave universal dissatisfaction to the parties, to the profession, and to the public. Burnet says, that, "as Chief Justice of the Common Pleas he was in great esteem, which he did not long maintain after his advancement. His study and practice lay so entirely in the common law, that he never seemed to apprehend what Equity was: nor had he a head made for the business of such a Court."§ But of all the writers who fleered at him, Roger North gives us the liveliest picture of the Lord Keeper himself and those about him. "He had been a celebrated lawyer, and sat with high esteem in the place of Lord Chief Justice of the *Common Pleas*. The removing him from thence to the Chancery did not at all contribute any increase to his fame, but rather the contrary, for he was timorous to an impotence, and that not mended by his great age. He laboured very much to please every body, and that is a temper of ill consequence in a Judge. It was observed of him, that if a case admitted of divers doubts, which the lawyers call points, he would never give all on one side, but either party should have somewhat

* He was succeeded by Lord C. J. Vaughan, on the 23d of May, 1668.

† Cr. Off. Min. 1667. ‡ Cr. Off. Min. 1667. § Burnet, i. 253.

to go away with. And in his time the Court of Chancery run out of order into delays and endless motions in causes, so that it was like a field overgrown with briars. And what was worst of all, his family was very ill qualified for that place; his lady being a most violent intriguess in business, and his sons kept no good decorum whilst they practised under him; and he had not a vigour of mind and strength to coerce the cause of so much disorder in his family."*

The printed Reports of his decisions in Chancery are so scanty, that the perusal of them does not enable us to form any opinion of him as an Equity Judge. The points to be found there are of small importance, and seem generally to have been properly ruled.†

We must now view him in his political capacity. Never being created a Peer, his only duty in the House of Lords was to put the question, and to address the two Houses in explanation of the royal will on the assembling of parliament. His first essay in this line was at the opening of the session, which began on the 10th of October, 1667.

His address was short and becoming; and he did not refer to the dismissal of his predecessor, unless, perhaps, in these general terms. "His Majesty hath reason to believe, that some disaffected persons have spread abroad discourses and rumours reflecting on the government. It is an easy thing to take exceptions: *Cum neque culpam humana infirmitas, neque calumniam regnandi difficultas evitat.*" But he had to read the joint address of both Houses to the King; "thanking his Majesty for having been pleased to displace the late Lord Chancellor, and remove him from the exercise of public trust and employment in the affairs of state."‡ He appears to have behaved with generosity to his former patron and friend, when all the world was abandoning him; and, at the risk of soon losing the Great Seal, to have done what lay in his power to stop the impeachment, and to prevent the necessity for flight. He was the messenger who carried to the King the last letter which Clarendon wrote to him in England, denying his privity with the marriage between the Duke of Richmond and "La belle Stuart;" and if he at last counselled him to withdraw, according to the strong hint which Charles then so insultingly gave,—Clarendon's own family, and most attached friends, now joined in the same advice.§ Whatever influence the new Lord Keeper had, was used to make the bill of pains and penalties, which the King and the Court party insisted on, operate with as little prejudice as possible to Clarendon and his property; and he behaved with kindness to the sons and dependants of the banished Earl.

[Oct. 1667.]

There was no one else on whom the courtiers could agree to confer the office of Lord Keeper. Meanwhile Bridgeman affixed the Great

* Life of Lord Keeper, i. 168. In another place he says, "The Lord Bridgeman, who was a very good common law judge, made a very bad Chancellor. For his timidous manner of creating and judging abundance of points, some on one side and some on another; and if possible contriving that each should have a competent share, made work for registers, solicitors, and counsel, who dressed up causes to fit his humour," ii. 74.—See also *Granger*, iii. 361. *Life of James II.* vol. i. 429.

† Cases in Chancery, Part I. Mod. I. ‡ 4 Parl. Hist. 366. § Ante, p. 205.

Seal to grants to Lady Castlemaine and others which Clarendon had stopped, and proved for a long time entirely submissive to them in all things. He was, therefore, allowed to hold it till the measures of the Cabal were so atrocious, and the orders imposed upon him were so revolting, that even *he* scrupled, and protested, and resisted,—when it was snatched from him by the most daring and profligate of mankind. He interfered with the general policy of the government less than any of his predecessors had ever done. If he can claim no merit for proposing or furthering the Triple Alliance, he was not implicated in the secret treaty with France for violating it, nor in the conspiracy deliberately formed to overturn the religion and the liberties of the country.

There are preserved to us speeches which he made at the opening of parliament in October 1669, February 1670, and October 1671; but they merely refer, in general terms, to the state of public affairs, and press for a supply to pay the King's debts.

He was in office when the Triple Alliance was negotiated, and he must have put the Great Seal to that treaty,* but the only two public measures with which his name has been connected are, "the Declaration of Indulgence," and "the Shutting up of the Exchequer:" and these led to his fall.

Clifford, who had planned the re-establishment of Popery, and the King's open profession of that religion,—in February, 1672, proposed in Council that a royal Declaration should be published "for indulgence to tender consciences, suspending by the supreme power in ecclesiastical matters inherent in the Crown, and recognised by several acts of parliament, all manner of penal laws in matters ecclesiastical, against whatsoever sort of non-conformists or recusants." As the Great Seal must be affixed to such a Declaration to give it any colour of validity, the Lord Keeper had been summoned to attend this Council. A most bigoted Protestant, he had been always eager for putting in force the penal laws against the Catholics, and his religion now warped his opinion upon constitutional law; for though he had often stood up for the King's dispensing power,—when he saw that such a use was to be made of it, he expressed great doubts whether it existed, and positively refused, without further consideration, to allow the declaration to pass the Great Seal.† As it must have caused great alarm directly to dismiss him from his office on the ground (as it would be said) that he had shown himself the champion of the Church of England and of the Protestant faith, Clifford proposed a proviso which he hoped might be soon got rid of, or not enforced, "that the benefit of public worship should not be extended to the Catholics, who, to avoid molestation, must confine their religious assemblies to private houses."‡

The Lord Keeper agreed to this compromise, but at the same time

* See Sir W. Temple's Letters.

† He here imitated the example of a greater man, Lord Clarendon, who, though a stickler for the dispensing power, flatly denied it when it was to be exercised in favour of liberty of conscience,—*ante*, p. 185.

‡ Parl. Hist. 515.

expressed his determination never to consent to the legalizing of the idolatry and will-worship of the Church of Rome in this Protestant land. [MARCH, 1672.] The Declaration came out, and he retained his office for some months, though thenceforth an object of suspicion and dislike to the existing administration.*

The proximate cause of his removal was his refusal, when sitting as a Judge in the Court of Chancery, to grant injunctions which were applied for in consequence of the most fraudulent and foolish act that any government ever resorted to. The object was to enable the King to carry on a war against Holland, in violation of the Triple Alliance, and, in conjunction with Louis XIV., to crush the liberties of the United Provinces, preparatory to the introduction of absolutism and Romanism into England. Large sums had been advanced by the bankers of London, for the repayment of which orders on the Exchequer had been issued, and the King having solemnly promised "that he would not, on any occasion whatever, suffer any interruption of payment of these orders of the Exchequer,"†—the honest men and profound political economists now at the head of affairs, resolved that the Exchequer should be suddenly shut, and that no payment should be made to any public creditor for a twelvemonth. The approach of the Dutch fleet to Gravesend, or the breaking out of the Great [JAN. 1672.] Plague, hardly produced a greater sensation in the city. An unexampled shock was given to commercial credit; trade was paralysed; many great mercantile houses became bankrupt; numbers of annuitants, widows, and orphans, were reduced to a state of the lowest distress,—and though, by this contrivance, a sum of 1,300,000*l.* was, in the first instance, placed at the disposal of the ministers, the regular revenue failed, and the finances were in a state of greater disorder than ever.

The bankers, to whom the large payments were due, were the first victims. The money which they had advanced to the government at eight or ten *per cent.*, they had borrowed at six or seven from their customers, who, not receiving principal or interest, brought actions against them, and threatened them with statutes of bankruptcy. When they stated the hardship of their case to Shaftesbury, who had the chief management of affairs at the Treasury board, he, vaguely recollecting something he had heard or read when a student in the Inns of Court about *Injunctions*, said, "Why do you not apply to the Lord Keeper for *an injunction* against all such proceedings,—to which you must be clearly entitled, as your inability to pay your customers proceeds entirely from an act of the King, resorted to for the safety of the state?"

* Burnet and others have said that the Lord Keeper refused to affix the Great Seal to the Declaration, and was for that reason dismissed from his office; whereas the Declaration issued in March, and he held the Great Seal till November. A curious account of this transaction is to be found in "a Letter from a person of quality to his friend in the country," which was written by Locke under the directions of Shaftesbury, and in which it is said that it was "the vanity of the Lord Keeper" which caused the Catholics to be named in the Declaration.—See 4 Parl. Hist. Appx. No. v. p. xxxviii.

† 14 St. Tr. 1.

They communicated this advice to their solicitors and counsel, who never had dreamed of such an expedient. But bills were immediately [Oct. 1672.] filed, and injunctions were moved for. The Lord Keeper was prepared for these motions by an intimation from Shaftesbury and his other colleagues, that it was indispensably necessary that all actions and proceedings against the bankers in consequence of the shutting of the Exchequer, should be stopped. Nay, a message was brought to the perplexed Bridgeman from the King himself, that "he deemed himself bound in honour to shelter the bankers whose money he had locked up in the Exchequer from the pursuit of their creditors."

But when the application was made in open Court, no principle or precedent could be cited to support it, although a feeble attempt was made on the ground that the fulfilment of the contract had been prevented by *vis major* or *casus fortuitus*,*—while the opposite counsel argued conclusively that the debt being admitted, and there being no legal defence, the inability of the debtor to pay could constitute no equity in his favour; that the rights of the creditor could not be prejudiced by the fraud or force of a third party; and that the shutting up of the Exchequer, whatever might be its character, was entirely *res inter alios acta.*

The case was so clear to the bar and the bystanders, as well as to the Lord Keeper himself, that he durst not grant the injunction; but in hopes to find out some by-point upon which he might intimate an opinion for the bankers, and so soften their disappointment, he said he should take the papers home with him, and pronounce judgment another day.

Shaftesbury, who was the real *actor*, was not a man so to be dealt with. He resolved that he would grasp the Great Seal, and grant the injunctions himself. He posted off to the King, swore that Bridgeman was an old dotard, quite unequal to his situation; declared that he (Shaftesbury) was himself much fitter for it; pointed out how the recent example proved the little use of black-letter learning in teaching what is just and equitable; and vowed that if he were made Chancellor the appointment would greatly redound to the King's ease and the public welfare. Charles, at first, thought that Shaftesbury was in jest, and received the proposal with a laugh; but Buckingham, Arlington, and Clifford were brought to support it,—probably from the hope that a colleague, whom they began to find very troublesome, might ruin his credit by such a freak, and at any rate would find plenty to occupy him without interfering with their departments. The King acquiesced, and Secretary Coventry, without any thing having been done to prepare the Lord Keeper for such a blow, was sent for the Great Seal, and demanded it from him,—while he was thinking of the least unpalatable terms in which he might refuse the injunction, and was hesitating whether he could with any decency refuse to punish the bankers with the costs of

* See Reports in Chancery, i. 24.

the application. Charles kept the Great Seal in his own custody one night, and next morning it was delivered to Shaftesbury with the title of Lord Chancellor. [Nov. 17, 1672.]

Burnet, in relating this event, says that Lord Keeper Bridgeman "had lost all credit at Court, with the reputation he had formerly acquired, and that they had some time been seeking an occasion to get rid of him."*

In addition to the refusal of the injunctions, Roger North assigns another direct cause of his removal, of which I no where else find any trace,—his refusal to seal "a commission for martial law," observing, "he was pressed, but proved restive on both points. For the sake of his family, that gathered like a snow-ball while he had the Seal, he would not have formalised with any tolerable compliances; but these impositions were too rank for him to comport with."†

After his fall he lived in entire seclusion at his villa at Teddington, and died there, 25th June, 1674.

Lord Chancellor Nottingham, referring to one of his decisions, said, —"It is due to the memory of so great a man, whenever we speak of him, to mention him with reverence and with veneration for his learning and integrity;" and Lord Ellenborough pronounces him "a most eminent Judge, distinguished by the profundity of his learning and the extent of his industry." But greatness will only be attributed to him by lawyers: he knew nothing beyond his own art; in only one department of that was he distinguished,—and such distinction, with opportunity, may be attained by any man of ordinary intellect and extraordinary industry. He is very much to be honoured for his steady and consistent adherence to his royalist principles, but he has received unmerited praise for having denied the dispensing power, and for having favoured toleration,—seeing that rather than give up his office he put the Great Seal to the Declaration suspending the penal laws when he had got the Catholics excluded from it,—and that he fully partook of the horror felt by Clarendon his patron, against all who were not high Protestant Episcopalians.

He is said to have favoured men of learning. Bishop Cumberland, author of the *De Legibus Naturæ*, was his chaplain, and received from him the living of All-hallows, Stamford.

He was twice married,—first, to Judith, daughter and heiress of John Kynaston, Esq. of Morton, in the county of Salop; and, secondly, to Dorothy, daughter of Dr. Saunders, Provost of Oriel College, Oxford, by both of whom he left issue. Sir Henry Bridgeman, the fifth Baronet, (whose mother was the daughter and heiress of Thomas the last Earl of Bradford, of the family of Newport,) was created Baron Bradford by George III. in the year 1794; and in 1815 his son was raised to the Earldom of Bradford, now enjoyed by the lineal representative in the male line of the Lord Keeper.‡

* Own Times, i. 198, 535. † Examen, 38.
‡ Grandeur of the Law, 97.

CHAPTER LXXXV.

LIFE OF LORD CHANCELLOR SHAFTESBURY FROM HIS BIRTH TILL THE RESTORATION OF CHARLES II.

We pass at once from a mere lawyer,—"leguleius quidam cautus et acutus, præco actionum, cantor formularum, auceps syllabarum,"—to a Chancellor who did not affect to have even a smattering of law, but who possessed brilliant accomplishments as well as talents, and who, as a statesman, is one of the most extraordinary characters in English history:

"For close designs and crooked counsels fit,
Sagacious, bold, and turbulent of wit;
Restless, unfix'd in principles and place;
In power unpleas'd, impatient of disgrace:
A daring pilot in extremity,
Pleas'd with the danger when the waves ran high,
He sought the storms; but for a calm unfit,
Would steer too near the sands to boast his wit.
In friendship false, implacable in hate,
Resolv'd to ruin or to rule the state.
Then seiz'd with fear, yet still affecting fame,
Usurp'd a patriot's all-atoning name."

From the birth and boyish position of Anthony Ashley Cooper, so enterprising, so energetic, so aspiring, so reckless, it might have been expected that he would have quietly devoted himself to dogs and horses, and that if his breast was ever fired by ambition, it would only have been to be High Sheriff of the county or Chairman of Quarter Sessions. While a schoolboy he was a Baronet in possession of large landed estates, yielding him a revenue of 8000*l.* a year.

The subject of this memoir was the son of Sir John Cooper of Rockborne, in Hampshire, who was created a baronet by James I., and Anne Ashley, only daughter and heiress of Sir Anthony Ashley, of Wimborne, St. Giles's, in the county of Dorset, who had been Clerk of the Council in the reign of Elizabeth, and had acted as secretary to the council of war in the expedition against Cadiz, in 1596.* He was born at Wimborne St. Giles, July 22, 1621. His grandfather died in 1627, and his father in 1631, when the title, with the fortunes of both families, descended upon him.

His early education was intrusted to Mr. Guerdean, a fellow of Queen's College, Cambridge, selected by Sir Anthony for strictness of principle and severity of temper,—the old gentleman often saying,

* Arch. xxii. 172.

"that youth could not have too deep a dye of religion, for business and conversation in the world would wear it to a just moderation."* It cannot be objected that the pupil showed himself over strait-laced and stiff from this early discipline.

It is related that the youth, while only thirteen years of age, showed the energy of his character by defeating a scheme of his trustees to deprive him of a large part of his property. Being a ward of the Crown, he went alone to Noy the Attorney-General, and acquainted him with the proceedings, observing that he had no one to depend upon but him, who had been the friend of his grandfather. Noy, pleased with his spirit, zealously undertook his cause in the Court of Wards, and succeeded for him, without taking any fees.†

In 1636 he was entered of Exeter College, Oxford, where he early distinguished himself by refusing to submit to some traditionary tricks attempted to be put upon him as a freshman, and by stirring up a rebellion against the seniors. I find nothing more recorded of his academical life, except that his wit, affability, and courage gained him the good-will of the University. He improved himself more by conversation than by study, and, though not grossly deficient in acquirements becoming a gentleman, he might well have been designated "*acerrimi ingenii—paucarum literarum.*"

Having remained about two years at Oxford,—to finish his education he was transferred to Lincoln's Inn,—where he remained for a short time,—associating with other young men of fortune like himself,—frequenting the theatres and fencing schools,—but without any thought of being called to the bar or studying the law.

While only eighteen he married a young lady of great beauty and accomplishments, a daughter of Lord Keeper Coventry. After his marriage he lived with his father-in-law; and now in a legal atmosphere, he must have imbibed the few loose notions of jurisprudence which he ever possessed. But instead of listening to the coifed sages of the law who frequented Durham House, he delighted himself, when accompanying the family into Worcestershire, to act the part of a fortune-teller,—which he did with great reputation, by the assistance of a servant who got into all the love stories of the houses which he visited. But such a mixture of contradictions was he, that according to Bishop Burnet, he himself "had the dotage of astrology in him to a high degree," and he declared, "that a Dutch doctor had from the stars foretold him the whole series of his life."

In one of these visits to the country he was invited to a public dinner given by the Bailiffs of Tewkesbury. Sir Harry Spiller, "a vain man, that despised all whom he thought his inferiors," thought fit to put many affronts on the Bailiffs and their entertainment, in the presence of the first gentlemen of the county, before whom they were desirous of appearing to the best advantage. Young Sir Anthony rose in defence of the corporation, and retorted on the assailant his rough

* Life by Martyn, 35.

† Life, 38.

raillery with such wit and success as to gain the victory, and completely to silence him.

This occurrence had an important influence on Shaftesbury's future destiny. The invasion of the Scots and the general discontents rendering a parliament indispensable, after an experiment of above eleven years' duration to rule by prerogative,—a writ came down to elect members for Tewkesbury, and the burgesses unanimously chose their champion as one of their representatives,—in his absence,—without his knowledge,—and when he was only nineteen years of age.

Before parliament met, his father-in-law, the Lord Keeper, died, and he was thenceforth his own master, or rather the slave of his own passions and caprice. [JAN. 1640.]

He took his place in the House of Commons during the short parliament which met in April, 1640;* but I cannot find any account of any of his speeches, although it seems impossible that he should have remained silent during the three weeks which elapsed before the dissolution. It is said that he diligently attended the House of Commons, and every day practised the useful lesson of writing out a report of their proceedings. We cannot doubt that he warmly supported the Court in the grand struggle which was led on opposite sides by Hyde and Hampden, whether the supply demanded should be granted before the consideration of grievances? Till he met with the affront about the garrison of Weymouth, hereafter to be related, he was an ardent friend of high prerogative.

For this very reason, probably, he had given dissatisfaction to his constituents at Tewkesbury; and it was now very difficult for a man of such principles, in the universal rage for reform, to find a seat. He stood for Downton, and was beaten. He petitioned against the return, but the decision of the House of Commons was against him.† Thus he never was a member of the Long Parliament till immediately before the Restoration, when, twenty years after it was first summoned, after several dispersions it met for the last time under the name of the Rump.

However, although to his great mortification prevented from defending Strafford and ship-money, out of parliament he exerted himself to the utmost in support of the royal cause. When hostilities were about to commence he attended the King to the north, and he was present at the ceremony of erecting the royal standard at Nottingham. In 1643, after various conferences with the leading royalists at Oxford, he was ordered to his house at Wimborne St. Giles, in the hope that he might get some of the towns in the western counties which were held for the parliament to declare for the King. He now declaimed with great eloquence at public meetings on the tyranny of the parliament, and the good intentions of Charles I.; and he displayed such boldness and address in the intrigues he carried on, that he prevailed on the in-

* The son of the Duke of Albemarle sat in parliament, after the Restoration, at the age of fifteen.

† Com. Journ. 10 Feb. 1641.

habitants of Weymouth to expel the parliamentary garrison, and to receive him as governor of the town in the King's name. Poole, Dorchester, and other places in that county, were about to follow their example. But Prince Maurice, who held a superior command in the west, superseded him as governor of Weymouth, refused to recognise the terms on which he had induced it to come over to the Crown, and treated the young baronet with great disdain. Sir Anthony took a journey to Oxford to lay his case before the King, and meeting with no redress, "he was thereby so much disobliged that he quitted the King's party, and gave himself up body and soul to the service of the parliament, with an implacable animosity against the royal cause."*

Upon this, as upon every subsequent change, however violent,—claiming the credit of being a perfectly consistent politician, and contending that the friends whom he abandoned had left those principles to which he steadily adhered,—he pretended that the aspect of public affairs had suddenly changed,—and he now affirmed that all who had a true regard for the monarchy ought to fight under the Earl of Essex. But it must be related to his honour, that he was now governed by a rule which he always afterwards rigidly observed, and which went far to redeem him from the odium of his frequent tergiversations,—that he never betrayed the secrets of a party he had left, or made harsh personal observations on the conduct of his old friends;—not only trying to keep up a familiar private intercourse with them, but abstaining from vindictive reflections upon them in his speeches or his writings.

Having travelled secretly from Oxford to London, he there formally sent in his adhesion to the parliament. He was received, as may be supposed, with great cordiality; but a committee of the House of Commons being appointed to confer with him and to examine him, he absolutely refused to make any discovery either as to persons or the management of affairs of what he had observed while he had been on the King's side, saying, that the maxim ought to be acted upon in public as well as private life,—"that there is a general and tacit trust in conversation, whereby a man is obliged not

[JULY, 1644.]

* Clarendon. This account of Shaftesbury's first change of party differs considerably from that given in the Memoir of his Life by Locke. I should have had no difficulty in preferring Locke to all other authority, had he been narrating from his own knowledge and observation; but during these events he was a boy at school, and he did not form an acquaintance with Shaftesbury till the year 1666. Then struck by his conversation, and fascinated by his kindness, he was blind to his vices, and gave implicit credit to all he heard from a man of such distinction. The memoir, and the "Letter from a Person of Quality," were both written at Shaftesbury's request, and on his representations. The converted patriot, in vindication of his consistency, was desirous that it should be supposed that he had been at the head of a middle party between the King and the parliament; whereas there is no doubt that, in the language of Clarendon, "he gave himself up body and soul," first to the one, and then to the other. The accurate Whitelock says, "he professed his great affection for the parliament, and his enmity to the King's party, from whom he had revolted; and was now in great favour and trust with the parliament."

to report any thing to the speaker's prejudice, though no intimation may be given of a desire not to have it spoken of again."*

The parliament was contented to receive him on his own terms; and by an ordinance of the two Houses, on the 14th of August, 1644, he was appointed one of the committee of the western counties for governing the army. A military district was assigned to him, and he was placed in the command of a brigade consisting of Colonel Popham's and Colonel Cooke's regiments. At the head of these, he marched to Wareham, a royal garrison, which he resolved to take by assault. [Oct. 1644.] Having carried one of the outworks, he drove the enemy into the town; and they, intimidated by this onset, surrendered, upon the terms that 300 of them should serve the parliament against the rebels in Ireland.

He next laid siege to Corfe Castle, which soon surrendered at discretion; and as a precaution against any attempt of the royalists to retake it, he threw a considerable body of foot and horse into the adjoining stronghold of Lulworth. Drawing together a large force from the garrisons of Weymouth, Poole, and Wareham, he marched to Abbotsbury, then a considerable place on the sea-coast, and took it by storm, after a gallant defence by Colonel Strangeways.† Having refreshed his men in Dorchester, he successively attacked the remaining garrisons in that part of England, and reduced them to obedience to the parliament.

He then marched to the relief of Taunton, where the gallant Blake [Nov. 1644.] (afterwards so illustrious as an admiral) was the governor, and his ammunition and provisions being exhausted, was on the point of capitulating. Shaftesbury first routed an auxiliary force coming to the assistance of the besiegers, and then their main body, and compelled them to raise the siege. He wrote a flaming account of this exploit to the parliament,—taking greater credit to himself than Cromwell in his despatch announcing his victory at Dunbar.

But he was suddenly satiated with military glory, and after this brilliant campaign never again appeared in the field. Whether he retired from some affront, or from mere caprice, is not certainly known.‡

There is a considerable obscurity as to the manner in which he employed himself during the several years which followed, while with envious eyes he saw Cromwell mounting to supreme power. To his unspeakable mortification he never was a member of the Long Parliament, all his attempts to get himself returned upon a vacancy being defeated from a suspicion of his unsteady and dangerous character. Had he succeeded in obtaining a seat, it is not at all improbable that he might have prevented the ascendency of the Independents and their Chief; for the Presbyterians, till "Pride's purge," were a majority in House, and they only wanted a bold and resolute leader to have suc-

* Life, 142. Locke's Memoir, Works, ix. 270.

† Vicars, Part IV. 67.

‡ Some have supposed that the "self-denying ordinance" drove him from the army; but this could not possibly be the case, as he was not then in parliament.

cessfully opposed such crafty schemes as "the self-denying ordinance" by which they were crushed.

Some accounts state that in the year 1645 Sir Anthony Ashley Cooper was High Sheriff of Norfolk; but his name does not appear in the list of High Sheriffs for that county, and during this year the office was served by Sir Jacob Astley. The following year he certainly was appointed High Sheriff of Wiltshire, under an ordinance which gave him leave to reside in Dorsetshire. He is said at this time to have distinguished himself as an active magistrate—exciting the admiration of the country people by his eloquence at sessions,—quarter, and petty.

[A. D. 1647.]

When he occasionally came to London he associated himself chiefly with the Presbyterian leaders; and he strongly dissuaded Hollis from the indiscreet move which terminated in Cromwell escaping to the army and practically assuming supreme power. It is said that the Lord General some time after meeting him, said to him jeeringly, "I am holden to you for your kindness to me; for you, I hear, were for letting me go without punishment; but your friend, God be thanked! was not wise enough to take your advice."*

[JAN. 17, 1652.]

In the beginning of 1652 he became a member of the famous commission for the reform of the Law; but he soon found this very dull work; and being shut out from all military and civil distinction, he became highly discontented, and muttered so loud against the reigning authorities, that he was actually taken up as a delinquent; but nothing could be proved against him except some intemperate speeches, and it was resolved by the House "that Sir Anthony Ashley Cooper be pardoned of all delinquency."†

After the expulsion of the Long Parliament he intrigued with Cromwell, who was anxious to secure him, and held out to him the prospect of being appointed Lord Keeper of the Great Seal,—an office for which he was quite as fit as Lisle or Fiennes, who actually held it.

[A. D. 1653.]

Shaftesbury at this moment saw no other course than to temporise with Oliver. He therefore, in his own county, pretended to have received "the new-light," after the fashion of the Independents; and when Barebones' Parliament was to be called, he contrived to get his name included in the list of "godly men" returned by the county of Wilts to the Council of State, from whom a selection was to be made of fit representatives of the people in the legislature. Cromwell actually appointed him one of this motley assembly.

Sir Anthony found himself in strange company; but, on the meeting of the House, he joined zealously in "seeking the Lord," along with the great body of fanatics of which it was composed. His views on the Great Seal were considerably dashed by the bill "for the immediate and total abolition of the Court of Chancery;" which, after it had been read a second time, he contrived to obstruct in the committee, by suggesting difficulties as to the determination of existing suits, and as to

* Life, 159.

† Com. Journ. March 17, 1652.

the enforcement of certain important rights, for which the courts of common law afforded no remedy.

Hence it has been said that he opposed Cromwell in this parliament, [A.D. 1653.] —which is supposed to be further proved by his having powerfully supported the motion made on the 12th of December, "that the sitting of the parliament any longer would not be for the good of the Commonwealth." But I think it is probable that the good understanding between these two extraordinary men still subsisted; and it is quite certain that the motion referred to was highly agreeable to Cromwell, who wished to get rid of the parliament immediately; and had "the Instrument of Government" all prepared and ready, by which, as soon as a dissolution took place, he was to be declared Lord Protector.

But there was a decided estrangement between them soon after; probably arising from the promise about the Great Seal not being fulfilled, —Cromwell's intuitive insight into character telling him that Shaftesbury was not to be trusted.

When the Protector's second parliament was called, on the excellent [July, 1654.] model so much praised by Lord Clarendon and the basis of Lord Grey's Reform Bill, Shaftesbury was one of the ten members returned for the county of Wilts; and, after a keen contest, he was at the head of the poll.*

When the parliament met, he strongly co-operated with the party [Sept. 7, 1654.] who were for beginning to inquire into the validity of "the Instrument of Government;" and the motion being made, "that the House do approve that the government be in one single person and a parliament," he supported the amendment, "that the Instrument of Government be examined, article by article, in a committee of the whole House." After a debate of three days, the amendment was carried by a majority of 141 to 136.†

This made the Protector resolve by a strong hand to exclude all such refractory spirits as Sir Anthony Ashley Cooper; and after sending for the Commons to Whitehall, and giving them a lecture, they found on their return, a military guard at their door, who would allow no one to enter without signing the following declaration :—

"I do hereby freely promise and engage to be true and faithful to the Lord Protector and the Commonwealth of England, Scotland, and Ireland; and shall not, according to the tenor of the indenture whereby I am returned to serve in this present parliament, propose or give my consent to alter the government as it is settled in one person and a parliament."‡

Shaftesbury absolutely refused to sign the declaration. Thus excluded, he intrigued actively against Cromwell, with the members who had signed it; and such an opposition was got up, that a dissolution took place within the five months during which, by "the Instrument of

* He was likewise returned to this parliament by Tewkesbury and by Poole—but elected to serve for his native county.

† 3 Parl. Hist. 1445.

‡ 5 Parl. Hist. 1454.

Government," the parliament ought at all events to have been continued.

The Protector finding Sir Anthony so troublesome, made a bold attempt to gain him over by appointing him a member of "the Council of State," with promises of further advancement; but he was not to be so caught, and, although he once or twice took his seat at the board, he soon alleged that the government by one person was against his conscience. Cromwell complained that "of all the political characters he had met with, the most difficult to manage was MARCUS TULLIUS CICERO,—*the little man with three names*."*

When Cromwell's third and last parliament was called, in 1656, Sir Anthony Ashley Cooper was again at the head of the poll for the county of Wilts; but all that he was permitted to do, as a member, was on the first day of the session to hear a sermon in the Abbey Church, and to be present in the Painted Chamber when Oliver in royal state delivered his speech explaining the causes of the summons. No member was allowed to enter the House of Commons without a certificate of approbation from the Council of State, which was peremptorily withheld from *him*, on the pretence of some former acts of delinquency. Thus he took no part in the discussions about offering the Crown to Cromwell; but he was secretly leagued with the republicans, and without doing any act to render himself liable to be tried before "a high court of justice," he keenly intrigued against the government.

Bishop Burnet, in contradiction to all other authorities, says that Shaftesbury advised Cromwell "to take the Kingship,"—although with a secret design to destroy him. But to render this story incredible, it is enough to observe that Shaftesbury remained excluded from the House of Commons, and that he was not one of the new Peers; whereas his aid would have been eagerly courted in either House. This is as little to be believed as another story Burnet tells us that "Cromwell offered to make Shaftesbury King." The truth is, that when in subsequent times Shaftesbury became acquainted with the good Bishop, he took undue advantage of his credulity, and mystified him exceedingly.† Shaftesbury certainly continued in opposition to the government, professing republican principles, till Oliver's death.

On Richard's accession he was again returned to the House of Commons for Wiltshire, although the old system of representation was revived, each county sending only two members; [JAN. 1659.] but Sir William St. John had now the greatest number of votes. Sir Anthony did not scruple to take the oaths to the new Lord Protector, and solemnly to abjure the family of Stuart; but he had the penetration speedily to discover that Richard's government could not stand, and that to put an end to the general discontent, the old dynasty would ere long be restored. He therefore left the republicans, and intrigued with the royalists. He used in after times to take to himself almost the whole merit of the Restoration, representing Monk as merely his tool; and in the preamble to his patent of Peerage, he introduced a statement

* Double Christian or surnames were then almost unknown in England.

† Burnet, i. 133.

that "this happy event was chiefly brought about by the efforts of our right trusty and well beloved Sir Anthony Ashley Cooper." But he really was of considerable use, by embarrassing the government of Richard,—by rendering a dissolution of parliament necessary,—by successively bringing into discredit the Rump and the Council of Officers,—and by thickening the general confusion, which made all men turn their eyes to the exiled King. There is preserved to us a full report of his speech in Richard's House of Commons, in the only important debate which took place while it sat,—the question being,—"Whether the other House, consisting of Oliver's Peers, should be recognised?" [FEB. 1ST, 1649.] He inveighed bitterly against them and their maker. "I acknowledge, Mr. Speaker, the mixture of the other House to be like the composition of apothecaries, who mix something grateful to the taste to qualify their bitter drugs, which else, perhaps, would be immediately spit out.* So, Sir, his Highness of deplorable memory, to countenance as well the want of quality as honesty in the rest, has nominated some against whom there lies no other reproach but only that nomination,—but not out of any respect to their quality, or regard to their virtues, but out of regard to the *no quality*, the *no virtues* of the rest; which truly, Mr. Speaker, if he had not done, we could easily have given a more express name to this other House than he hath been pleased to do; for we know a house designed for beggars and malefactors is *a House of Correction*, and so termed by our law. But, Mr. Speaker, setting those few persons aside who, I hope, think the nomination a disgrace, and their ever coming to sit there a much greater, can we without indignation think of the rest? He who is first in their roll,† a condemned coward; one that out of fear and baseness did once what he could to betray our liberties, and now does the same for gain. The second,‡ a person of as little sense as honesty, preferred for no other reason but his no-worth—his no-conscience,—except cheating his father of all he had was thought a virtue by him, who, by sad experience, we find hath done as much for his mother—his country. The third,§ a Cavalier, a Presbyterian, an Independent—for the Republic—for a Protector—for every thing—for nothing—but only that one thing—money. It were endless, Sir, to run through them all—to tell you of the Lordships of 17*l.* a-year land of inheritance, of the farmer Lordships, draymen Lordships, cobbler Lordships, without one foot of land but what the blood of Englishmen has purchased. These, Sir, are to be our rulers, these the Judges of our lives and fortunes. To these we are to stand bare, whilst their pageant Lordships deign to give us a conference on their breeches. The

* "Così all' egro fanciul porgiamo aspersi
Di soave licor gli orli del vaso;
Succhi amari ingannato intanto ei beve,
E dall' inganno suo vita riceve."

† Fiennes, who had been found guilty of cowardice in surrendering of the Great Seal, but afterwards restored and made Keeper.

‡ Lisle, an officer and Keeper of the Great Seal.

§ Lawrence, one of the King's Judges.

House of Lords are the King's great hereditary council; they are the highest court of judicature; they assist in making new laws and abrogating old; from amongst them we take our great officers of state; they are commonly our generals at land and our admirals at sea. In conclusion they are both of the essence and constitution of our old government; and have besides the greatest and noblest share in the administration. Now certainly, Sir, to judge according to the dictates of reason, one would imagine some small faculties and endowments to be necessary for discharging such a calling; and such are not usually acquired in shops and warehouses, nor found by following the plough; and what other academies most of their Lordships have been bred in but their shops—what other arts they have been versed in but those which more required good arms and good shoulders than good heads, I think we are yet to be informed."*

The recognition was carried by a majority of 177 to 113; but this attack hastened the dissolution, which terminated the Protectorate, and put an end to the danger, once so formidable, of a Cromwell dynasty.

Shaftesbury's present policy was to assist in weakening each party that successively gained an ascendency, till, by some expression of the national will, the King should be recalled. He intrigued against the officers at Wallingford House till the "Rump" was restored. He was then named a member of the "Council of State;" but, instead of taking his seat in it, he did all that he could to introduce disunion and discord among the members. Monk, calculating upon his influence, wrote to him, soliciting that none of the officers of the army in Scotland might be removed. He returned a favourable answer, and a friendly correspondence was established between them. He secretly encouraged a royalist rising in Dorsetshire, and incurred so much suspicion, that he was taken into custody, and brought before the Council of State; but they were obliged to release him for want of evidence; and the parliament, on the motion of a friend of his resolved "that Sir Anthony Ashley Cooper is clear from the accusation laid against him, and that there is not any just ground of jealousy or imputation upon him." [SEPT. 1659.]

But the majority of this assembly being for the desperate experiment of a pure republic without any head, he encouraged them to cashier Lambert and Desborough,—which led to another expulsion of the "Rump." He had next to agitate against "the Committee of Safety," consisting of officers who wished to restore "the Protectorate" under one of themselves; and he was mainly instrumental in upsetting them, by heading the mob which met in Lincoln's Inn Fields,—by leading them to the Rolls House in Chancery Lane,—and by insisting that Lenthal should proceed to Westminster, and again take the chair as Speaker.† [DEC. 26, 1659.]

* See Old Parliamentary History, xxi. 297. Biog. Brit. "Cooper." Life, 199. I have given only a short specimen of Sir Anthony's tirade, which is much more lively than well founded; for, with very few exceptions, Cromwell's peers were men of family, wealth, and reputation.

† 3 Parl. Hist. 1571.

The first act of the restored "Rump" was to appoint Sir Anthony one of the Commissioners for the command of the forces; [A. D. 1660.] and he was enabled, by sudden orders for changing their officers and moving their quarters, to paralyse the power of Lambert. He next contrived to get himself seated in the House of Commons as representative for Downton, on the plea that he had been duly elected, and ought to have been returned for that place in the year 1640,* and he thenceforth mainly guided their proceedings with a view to the Restoration. Monk was advancing from the north, and, notwithstanding his dissimulation, little doubt was entertained as to his ultimate intentions. Shaftesbury wrote to him to hasten his march, and assured him that he need apprehend no resistance. Soon after Monk's arrival he instigated him to make the declaration at Guildhall for "a free parliament," which was as much as for the King's recall. Bonfires being lighted, at which rumps were roasted, as Shaftesbury was returning from the city with Colonel Popham, the mob surrounded the carriage, and, knowing them to be members of the House of Commons, loudly shouted, "Down with the Rump!" Shaftesbury looked out, and, smiling, exclaimed, "What, gentlemen, not one good steak in the whole rump?" The mob were tickled with the jest, and some of them asserting that he was "a brave boy," they accompanied him with acclamations to his lodgings.

Shaftesbury warmly supported the act for putting an end to the Long Parliament, and he was appointed one of the new Council of State who were to carry on the government till the Convention Parliament could assemble.

To this parliament he was again returned as member for the county of Wilts; and he had completely recovered his popularity in the west, for he was now at the head of the [April, 1660.] poll. When the House met, nothing remained but to arrange the ceremonial of the King's return. Sir John Grenville having delivered his Majesty's letter, Shaftesbury was appointed one of a select committee to draw up the answer; and he was chosen one of the Commissioners of the Commons to repair to Breda with the humble invitation and supplication of the parliament, "that his [May 1, 1660.] Majesty would be pleased to return, and take the government of the kingdom into his own hands."

In this journey he met with a dangerous accident. Being overturned in his carriage on a Dutch road, he received a wound between the ribs, which ulcerated many years after, and was opened when he was Chancellor. By way of compensation, this misfortune was the cause of his subsequent introduction to the famous John Locke. For the present he seemed to recover, and, accompanying the other Commissioners, he was able to throw himself at the King's feet. At this first interview they little anticipated either the extraordinary intimacy, or the extra-

* He had twice unsuccessfully renewed his petition, in September 1645, and in May, 1659. See Com. Journ. 7th January, 1660.

ordinary enmity, which was afterwards to prevail between them. The King received him very courteously, and told him "he was very sensible with what zeal and application he had laboured for his restoration."*

CHAPTER LXXXVI.

CONTINUATION OF THE LIFE OF LORD SHAFTESBURY TILL HIS APPOINTMENT AS LORD CHANCELLOR.

Soon after the King's return, Sir Anthony Ashley Cooper, in recompense of his services, was successively made a Privy Councillor, Chancellor of the Exchequer, Lord Lieutenant of the county of Dorset, Governor of the Isle of Wight, and Baron Ashley of Wimborne St. Giles.

His conduct for the next seven years seems wholly inexplicable; for he remained quite regular, and seemingly contented. He had a little excitement by sitting as a judge on the trial of the regicides, and joining in the sentence on some of his old associates. Not being a member of the Long Parliament, he had not joined in this particular treason, but he had often actually "levied war" against Charles I., and he had on several occasions acted under the parliament as zealously as Sir Harry Vane, for the purpose of keeping out Charles II., so that his life had been forfeited to the law by his co-operation with the prisoners. Still he thought it right and decent that he should countenance the proceedings against them.

These trials being over, he seemed to sink down into a Treasury drudge. The office of Chancellor of the Exchequer, which he held, though a peer, was not then of much importance, and chiefly imposed the duty of attending to accounts. He was not a member of the Committee of the Council to whom, under Clarendon, the conduct of foreign affairs and the management of the business in parliament were intrusted. Strange to say, it was some years before he began seriously to try to undermine Clarendon. The only solution is, that his uncle, Southampton, the Lord Treasurer, who had become very infirm, left to him almost the sole direction of the Exchequer, with all its patronage; and, being strongly attached to Clarendon, probably laboured to induce him to abstain from any turbulent measures. Shaftesbury, along with Southampton, gave some opposition to the "Corporation Act" and the "Act of Uniformity;" and when Dunkirk had been sold, he expressed some disapprobation of that transaction. He strongly supported the "bill for indulgence," which was brought in to please the King, and was rejected by the hostility of Clarendon. But during these years he

* Life, 203.

did not take by any means a prominent part in parliament, and he devoted himself much to the duties of his office. He considered himself bound regularly to attend the King at Whitehall, to pay court to Lady Castlemaine, and to cultivate with unwearied assiduity his reputation for licentiousness,—which he did so successfully as even to rival that of his Master.

But he became tired of routine business and the life of a mere *roué;* [A. D. 1667.] and seeing with satisfaction the King's growing dislike to Clarendon, he took every opportunity of widening the breach between them. By the death of Lord Southampton, in May, 1667, all restraint was removed, and he entered into a strict alliance with Arlington and Clifford for Clarendon's overthrow. The Treasury was put into commission against Clarendon's strong opinion, and Shaftesbury contrived to get himself named the first efficient Commissioner, still retaining his office of Chancellor of the Exchequer. His influence from henceforth grew daily; he managed to make all the odium of the Dutch war fall upon the Chancellor, who had from the beginning disapproved of it; he aggravated the discontent of Cavaliers, Dissenters, and Roman Catholics, pointing out the Chancellor as the author of all their grievances; and he incited Lady Castlemaine to seek revenge upon the man who, to be sure, had earnestly tried to prevail upon the Queen to receive her as a lady of the bedchamber, but who had given her mortal offence by forbidding his wife to visit her. After a hard [Aug. 31, 1667.] struggle they spirited up the King to take the Great Seal from Clarendon, and, as a temporary arrangement, to give it to Sir Orlando Bridgeman. Shaftesbury probably had thought of it for himself ever since it was promised to him by Cromwell; but neither the Court nor the public were yet at all prepared to see such a successor of Sir Thomas More and Lord Ellesmere, and his pretensions could not at present be put forward. If either Sir Jeffry Palmer or Sir Heneage Finch, who with great reputation filled the offices of Attorney and Solicitor General, had been appointed, there might have been some difficulty in removing them; but Bridgeman, from his age, could not hold the Seal many years; and from his want of political importance might be set aside at pleasure.

The expectant Chancellor zealously co-operated with those whose [Sept. 1667.] object it was,—not to bring Clarendon to the scaffold, but to compel him to fly the country,—so that neither by the interest of the Duke of York, or a relenting of the King, he might ever recover power. When the impeachment for high treason came up from the Commons, with a requisition that the accused should be immediately imprisoned, Shaftesbury strenuously resisted the application, on the ground that the Commons had specified no particular act of treason; but he supported the bill by which Clarendon was banished for life, and was rendered liable to instant execution if he ever again set foot on English ground.*

* 4 Parl. Hist. 373.

The first act of the new administration (constituting an exception to the whole foreign policy of this reign) was wise and virtuous—"the Triple Alliance," by which the free state of Holland was saved from the rapacity of a tyrant openly aspiring to the dominion of Europe. Sir William Temple has all the merit of this deviation into rectitude; and the surprise is, that those about the King permitted him, even for a time, to desert his cherished connexion with France, which brought them plenteously avowed pensions and secret bribes. But the wax which sealed the treaty of Aix-la-Chapelle was hardly cold before they began to plot against it. Shaftesbury's apologists have contended that he was always an enemy to the French Alliance; but this is contrary to all contemporary testimony, as well as to all probability. I believe he did not take money from Louis, like his colleagues, for he was always above pecuniary corruption; but there cannot be a doubt that, with a view to gratify the King, and to consolidate his own power, he acceded to the conspiracy for crushing the liberties of Holland, and for establishing, with French assistance, Popery and arbitrary government in England. [JAN. 1668.]

> "To compass this the triple bond he broke,
> The pillars of the public safety shook,
> And fitted England for a foreign yoke."

It has been suggested that, being now as keen a Protestant as when he denounced the Popish plot, it was on the enlightened principles of toleration that he supported "the Declaration of Indulgence," to which he induced the Lord Keeper Bridgeman to put the Great Seal. Unluckily, at this time he knew that Charles had been reconciled to Rome, and that the Declaration was a measure preparatory to the King's avowal of his conversion. He was too penetrating a genius not to discover that religious toleration was highly expedient; but, for the sake of his ambition, he would have been ready to prosecute Catholics or Protestants with indiscriminate zeal.

Although Clifford certainly was the first to propose the shutting up of the Exchequer to the Council, there is great reason to think that Shaftesbury, who had the sole management of the finances as Chancellor of the Exchequer and Lord Commissioner of the Treasury, originated the nefarious scheme; and, at all events, he supported and defended it.

By this conduct he rose into unbounded favour with the King, who, though he afterwards pronounced him "the weakest and wickedest man of the age," now professed the highest admiration not only of his agreeable manners, but of the boldness, energy, and originality of his genius as a statesman. In anticipation of greater advancement, as a reward for his services in closing the Exchequer, he was created Earl of Shaftesbury. It is said that he was offered the Treasurer's staff, but that, on account of the national insolvency, for which he knew no real cure, he declined it. [A.D. 1672.]

The CABAL was now in the zenith of its power. There were con-

siderable jealousies among the members of the administration; but the energy of Shaftesbury prevailed, and he was the mainspring of all its operations. His reputation was not at all impaired by the general distress which followed the shutting up of the Exchequer,—when he came forward with his remedy of stopping, by injunctions, all the suits against the bankers,—whereby commercial credit was to be restored.

I have stated, in the Life of Lord Keeper Bridgeman, the refusal of that Judge to grant these injunctions, and his consequent dismissal.*

The ceremony of delivering the Great Seal to Shaftesbury, with the title of Lord Chancellor, took place next morning at Whitehall, I presume, in the apartments of Lady Castlemaine.† "And the said Earle having received the said Great Seale as Lord Chancellor, he presently attended his Majesty at his chappell in Whitehall in that capacity, bearing the said Seale before his Majesty."‡

[Nov. 16, 1672.]

[Nov. 17, 1672.]

The event was thus announced to the public in the London Gazette.

"Whitehall, Nov. 17, 1672.

"His Majesty, reflecting upon the age and infirmities of Sir Orlando Bridgeman, Lord Keeper of the Great Seal of England, hath thought fit to admit of his resignation thereof, with all demonstration on his Majesty's part of his kindness and esteem of the said Lord Keeper's merit towards him; and his Majesty, willing to gratify the uninterrupted good services of the Earl of Shaftesbury, Chancellor of the Exchequer and one of the Lords Commissioners of the Treasury, was pleased this day to give unto him the keeping of the said Great Seal, with the title of Lord Chancellor of England."

CHAPTER LXXXVII.

CONTINUATION OF THE LIFE OF LORD SHAFTESBURY TILL HIS DISMISSAL FROM THE OFFICE OF LORD CHANCELLOR.

I CANNOT find how the new appointment was at first received by the profession of the law or by the public; but it seems entirely to have turned the head of the Lord Chancellor himself, and notwithstanding his excellent good sense, and his discernment of the impression to be made by his conduct, he now played fantastic tricks which could be expected only from a fool and a coxcomb. "After he was possessed

* Ante, p. 234.

† While she retained her ascendency, the ministers met the King in her apartments every Sunday morning, and attended him from thence to the chapel—even when they were to receive the communion.

‡ Crown. Off. Min. 1672.

of the Great Seal he was in appearance the gloriousest man alive; and no man's discourse in his place ever flew so high as he did, not only against the House of Commons, where perhaps he expected a party to sustain him, but against the tribe of the Court of Chancery officers and counsel, and their methods of ordering the business of the Court. As for the Commons, he did not understand by what reason men should sit and vote themselves privileges. And for the Chancery, he would teach the bar that a man of sense was above all their forms. So with all the gayety *de cœur* imaginable, and a world of pleasant wit in his conversation, (as he had indeed a very great share, and showed it upon all occasions,) he composed himself to perform the duties of his office."*

Such confidence had he in his judicial powers derived from "the light of nature," that, unlike Lord Keeper Williams and some of his sneaking predecessors, who being "minus sufficientes in lege," had great misgivings as to their ability of acquitting themselves decently, and put off as long as possible the time of taking their seat in the court of Chancery, he was impatient to show that he was superior as a Judge to all who had ever before sat in the marble chair. "The next day, being the xviiith day of November, his Lo^p went to the Chancery Co^{rt} in Westm^r Hall, and there standing in his place tooke the oathes as Lord Chancellor, the booke being held to him by the Master of the Rolls, the Dukes of Lauderdale and Ormond, the Earle of St. Alban's, the Earle of Arlington, and several other persons of honour accompanyinge his Lo^p to and in the Co^{rt} untill his Lo^p was sworne, all the said persons of honour, with the Judges and Chancery officers attending his Lo^p from his house in the Strand, to the Chancery Co^{rt} in Westm^r Hall."†

I do not find any further account of this installation, which, having been got up so very suddenly, could not have been very splendid. But to compensate for the disappointment, Shaftesbury determined to amuse the metropolis with a sight that had not been seen for half a century. Coaches were introduced into England in the latter end of the reign of Elizabeth, and had for many years become so common that the ancient custom of the Chancellor and the Judges riding on horseback to Westminster Hall to open the term had been entirely laid aside, and the Chancellor had headed the procession in a grand gilt state carriage almost as large as a house,—being followed by the Judges, the King's Serjeants, the King's counsel, &c., in modern equipages. They still continued to "ride the circuit" on sober pads, but the *ménage* for learning to sit the great horse, which used to be frequented by the gentlemen of the Inns of Court, was very much neglected, and the practice of riding managed horses in the streets of London had fallen into entire disuse. Shaftesbury, who had been bred a country squire, and had been colonel of a regiment of cavalry, piqued himself much upon his horsemanship, and to gratify his morbid appetite to be talked

* Examen, 46. † Crown. Off. Min. 1672.

of, and out of malice to some of the old Judges, who he heard had been sneering at his decisions, he issued an order that on the first day of Hilary term, 1673, there should be a judicial cavalcade according to ancient form, from Exeter House in the Strand, the place of his residence, to Westminster Hall. On that day he gave a sumptuous breakfast not only to noblemen, judges, and other dignitaries, but to all the barristers, all the students of the Inns of Court, and the sixty clerks, with all the other officers of the Court of Chancery. He then mounted his richly caparisoned charger,—preceded by those who bore the insignia of his authority,—his master of the horse, page, groom, and six footmen walking along by his stirrup.

This procession marched by the Strand through the quadrangle at Whitehall to King Street, then the only entrance to Palace Yard,—and so to Westminster Hall. It is described by several contemporary writers,* but Roger North's account of it is the most graphic.

"His Lordship had an early fancy, or rather freak, the first day of the term, (when all the officers of the law, King's Counsel, and Judges, used to wait upon the Great Seal to Westminster Hall,) to make this procession on horseback, as in old time the way was, when coaches were not so rife. And accordingly the Judges, &c., were spoken to get horses, as they and all the rest did, by borrowing and hiring, and so equipped themselves with black foot-cloaths in the best manner they could: and divers of the nobility, as usual, in compliment and honour to a new Lord Chancellor, attended also in their equipments. Upon notice in town of this cavalcade, all the show company took their places at windows and balconies, with the foot guard in the streets to partake of the fine sight, and, being once well settled for the march, it moved, as the design was, statelily along. But when they came to straights and interruptions, for want of gravity in the beasts and too much in the riders, there happened some curveting, which made no little disorder. Judge Twisden, in his great affright and the consternation of his grave brethren, was laid along in the dirt;† but all at length arrived safe, without loss of life or limb in the service. This accident was enough to divert the like frolic for the future, and the very next term after, they fell to their coaches as before. Usages that are most fitting at one time appear ridiculous at another. As here the sitting of grave men used only to coaches, upon the *ménage* on horseback, only for the vanity of show, to make men wonder and children sport, with hazard to most, mischief to some, and terror to all, was very impertinent, and must end, as it did, in ridicule."

We now come to consider how Shaftesbury comported himself in the Court of Chancery. The general opinion of subsequent times has been, that, with all his faults as a statesman, he proved a consummate

* See Rawleigh Redivivus, 75.

† According to tradition this disgrazia happened from meeting a line of brewer's drays at Charing Cross. When Twisden recovered himself, he declared *in furore*, "that no Lord Chancellor should ever make him mount on horseback again."

Judge.* I believe that this opinion is wholly erroneous, and that it is entirely to be ascribed to the celebrated lines in praise of his judicial character in "Absalom and Achitophel."

"Yet fame deserv'd no enemy can grudge,
The statesman we abhor, but praise the judge;
In Israel's courts ne'er sat an Abethdin
With more discerning eyes or hands more clean,
Unbrib'd, unsought, the wretched to redress,
Swift of despatch, and easy of access,
Oh! had he been content to serve the Crown,
With virtues only proper to the gown!"

Had Dryden been sincere and honest in praising Shaftesbury, his testimony ought not to have much weight, for the great poet probably never was in the Court of Chancery in his life, and though the first of English critics in polite literature, he could not have formed a very correct opinion as to the propriety of an order or decree in Equity. But the panegyric was purchased, and was a mere poetical picture drawn from the imagination of the *beau idéal* of a good Chancellor. It did not appear in the first edition of the poem which, in describing the character of Achitophel, contained unmixed invective, and represented him as unredeemed from his vices by any semblance of virtue. Shaftesbury, nevertheless, while the town was ringing with abuse of him, and he was universally pointed to as "the false Achitophel,"—being a governor of the Charter House, sent to Dryden a nomination to that establishment for his son,—which was highly valuable to him, and was joyfully accepted. A second edition was called for. The bard could not soften the political character of his hero without utterly destroying the poem, and breaking with the Court who had paid him well for it, but in the fulfilment of an implied obligation, he set his wits to work to consider what a Chancellor should be in administering justice, and so produced the lines which have induced posterity to believe that such a Chancellor was Shaftesbury. King Charles is said to have been very indignant when he saw the second edition, and to have declared that the portrait of Achitophel was so disfigured that he no longer recognised the original.†

* "It is remarkable that this man, whose principles and conduct were in all other respects so exceptionable, proved an excellent Chancellor."—*Hume.* And all the historians of the eighteenth century, reading Dryden or copying each other, write to the same effect.

† Malone, in his "Life of Dryden," has attempted to refute this story, but in my humble opinion he has utterly failed. He has shown satisfactorily that it could only apply to the poet's third son, the two elder being educated at Westminster School, and he has given a copy of the admission of this youth in the following words:—

"Feb. 5th, 1682—3. Erasmus Henry Dryden admitted for his Majesty (in the room of Orlando Bagnall) aged 14 years 2d of May next."

He reasons that as the admission did not take place in the end of Nov. 1681, between the two editions of the poem, there could be no connexion between the poetry and the presentation. But on inquiry I find that at the Charter House the admission sometimes does not take place till years after the nomination. The expression here "for his Majesty," may be inaccurate, and if accurate may be explained by an exchange of one nomination for another (not an unusual practice) to suit the ages

Shaftesbury never took bribes. Luckily he had only one political case before him; and he would not listen to private solicitation in favour of litigants. But except being free from gross corruption, he was the worst Judge that had ever sat in the Court. This was inevitable, for he might as well have tried to sustain a principal part in an opera, without having learned the first rudiments of music.

There was no refusal to practise before him on account of his ignorance of the law, as in the case of Lord Chancellor Hatton and Lord Keeper Williams. The bar took a more effectual mode of exposing and subduing him. Had he been ruled by his assessors,* he might have avoided any palpable absurdities; but despising all learning that he did not know, he thought he was fitter to decide than any of them, and he scorned their advice. To show his contempt for all who had gone before him, as well as his contemporaries, he would not be habited like his predecessors, "for he sat upon the bench in an ash-coloured gown silver-laced, and full ribboned pantaloons displayed, without any black at all in his garb unless it were his hat."† Roger North's account of the result of all his boasts may be relied upon. "He slighted the bar, declared their reign at an end. He would make all his own orders his own way, and in his discourse trampled on all the forms of the Court. And to be as good as his word, at his first motion-day, although the counsel (as always out of respect to a new judge) were easy and inclined of themselves to yield to what was fit to be ordered, and not to perplex him with contention upon forms; yet he would not accept of their civility, but cut and slashed after his own fancy; and nothing would down with him that any of them suggested, though all were agreed upon the matter. They soon found his humour, and let him have his caprice; and after, upon notice, moved him to discharge his orders; and thereupon, having the advantage upon the opening to be heard at large, they showed him his face, and that what he did was against common justice and sense. And this speculum of his own ignorance and presumptiou coming to be laid before him every motion-day, did so intricate and embarrass his understanding, that, in a short time, like any haggered hawk that is not let sleep, he was

of the boys,—and it is nothing when we consider that the anecdote rests on the authority of a most respectable lawyer, STRINGER, the intimate friend and protégé of Shaftesbury, who was Secretary of Presentations to him while he was Chancellor, and probably would be the person by whom the act would be done;—that it is confirmed by Martyn, who wrote the life of the first Lord Shaftesbury under the superintendence of his grandson;—and that it is repeated in the eulogistic Life of Lord Shaftesbury in the "Biographia Britannica," written by Dr. Kippis, who is said to have received 500*l.* from the family for the pains he bestowed upon it. It has been said that Dryden could not have composed "the MEDAL," after receiving such a favour from Shaftesbury,—but this is explained by the royal solicitation and the 100 broad pieces.—See *post.*

* By a reference to the minutes in the Registrar's Office, it appears that on the 18th of Nov. 1672, the Master of the Rolls and Mr. Baron Windham sat with him, and that he had the Master of the Rolls, or a common law Judge, and Masters in Chancery by him every day he sat till the end of the term.

† Examen, 60. He is said to have been "more like a rakish young nobleman at the University than a Lord High Chancellor."

entirely reclaimed. And from a trade of perpetually making and unmaking his own orders, he fell to be the tamest Judge, and, as to all forms and modes of proceeding, the most resigned to the disposition of the bar that ever sat on that bench."* "He swaggered and vapoured what asses he would make of all the counsel at the bar, but like the month of March, as they say, '*In like a lion, and out like a lamb.*'"†

There are a few of his decisions to be found in the books,‡ but none of these are of the slightest importance, except "the Bankers' case," for which he assumed the Great Seal. The application for the injunctions was immediately renewed before him. Having told the King "that it was only a morose scrupulosity and humour in his old Keeper that made him averse to passing them," he could not flatly refuse them, although, "it was said to be no new device to shove men out of their places by contriving incomportable hardships to put upon them, and after bespeaking the succession by officious undertaking to do all that was required to break the condition of the advancement."§ He was a good deal perplexed; for on the renewed argument it was made to appear more clearly than ever that the illegal act of shutting up the Exchequer could not be a ground for preventing actions against the bankers to recover acknowledged debts long since payable. After a little blustering at the unreasonableness of the creditors, he resorted to the expedient of granting injunctions unless cause should be shown at a distant day, and, by some contrivance, the day of hearing was postponed from time to time till he went out of office.

* Examen, 57.

† Life of Guilford, ii. 74. The only contradictory authority, if such it may be called, is "Rawleigh Redivivus," which being an unmixed and unqualified eulogy of the whole life of Shaftesbury, contains lines extolling not only the purity of his morals, but his judicial excellence:—

——— "His choice sagacity
Straight solv'd the knot that subtle lawyers tyed,
And through all fogs discern'd the oppressed side;
Banish'd delays, and so this noble peer
Became a star of honour in our sphere."—Part i. 88.

It has been supposed that he was the author of a new code for regulating the practice of the Court of Chancery; and there is extant a paper entitled "A Collection of the Orders heretofore used in Chancery, with such alterations and additions thereunto as the Right Honourable Anthony Earle of Shaftesbury, Lord High Chancellor of England, by and with the advice and assistance of the Honourable Sir Harbottle Grimstone, Baronet, Master of the Rolls, hath thought fit at present to ordaine and publish: For reforming of severall abuses in the said Court, preventing of multiplicity of suites and unnecessary charge to the suitors, and for their more expeditious and certaine course for reliefe." This collection is exceedingly well digested, and might have been very useful; but it can confer no credit on Shaftesbury, for he left his office without ever having signed it, and the probability is, that he never even read it. It had been drawn up for his consideration, but he had thrown it aside. The regulations it contains against the idleness and malpractices of counsel are particularly curious.—See *Saunders's Orders*, i. 344, n., ii. 1056, 1075. Martyn, by Cooke, ii. 81.

‡ See Reports in Chancery, 24 and 25 Car. II. § Examen, 39.

In swearing in Mr. Serjeant Thurland a Baron of the Exchequer, the Chancellor gave him a lecture on his duties after ancient custom, saying, amongst other things,—"Let not the King's prerogative and the law be two things with you, for the King's prerogative is law and the principal part of it; and therefore in maintaining that you maintain the law. So manage the King's justice and revenue as the King may have most profit and the subject least vexation. Give me leave also to remind you of your oath that *the King's need ye shall speed before all other*, that is, the business of the revenue of the Crown you are to despatch before all other, and not turn your Court into a Court of Common Pleas, and let that justle out what you were constituted for. Let me conclude with what concerns all my Lords the Judges, as well as you, let me recommend to you the port and way of living suitable to the dignity of your place and what the King allows you."

He wished the Treasury to have remained in commission, and was rather annoyed by Clifford receiving the white staff, and being placed above him in the ministry. When the new Lord Treasurer was sworn in before him, he made a speech in which after applying to the King the character of the Emperor Titus—"*Deliciæ humani generis*," he said, "no subtle insinuations of any near him, nor the aspiring interest of a favourite, shall ever prevail against those that serve him well, nor can his servants fear to be sacrificed to a more swelling popular greatness."

Parliament had not met for nearly two years, being prorogued from time to time that the CABAL might more quietly carry on their operations,—but the state of the Exchequer at length rendered a session indispensable. To strengthen his party in the House of Commons, Shaftesbury resorted to the bold measure of issuing writs by his own authority for the election of new members to fill up all the vacancies which had occurred. These writs were delivered to his creatures who were to be candidates, and who, being able to fix the time of election, generally succeeded. He likewise maintained that, the writs issuing under the Great Seal, it was for the Chancellor to decide the validity of the elections, in spite of the resolutions of the House of Commons usurping a jurisdiction on this subject.

On the 4th of February, 1673, the session began, and the King having addressed the two Houses, was followed by Shaftesbury in a speech which for impudence and effrontery far exceeds any to be found in our parliamentary records. He begins in a protecting, condescending, patronising style, by praising his royal Master:—"My Lords, and you the knights, citizens, and burgesses of the House of Commons, the King hath spoken so fully, so excellently well, and so like himself, that you are not to expect much from me." He justifies the two years' adjournment on the ground that the King wished to give the members ease and vacancy for their own private concerns. He boldly defends the breach of the triple alliance, and the league with the French King against the Dutch:—"Both Kings knowing their interest, resolved to join against them who were the common enemies to all monarchies, and

I may say especially to ours, their only competitor for trade and power at sea, and who only can stand in their way to an universal empire as great as Rome. But you judged aright. *Delenda est Carthago*, and therefore the King may well say to you, "*it is your war.*" The shutting up of the Exchequer he treats without any apparent consciousness of the measure being liable to the slighest blame, saying, that "the King had made use of his own revenue which had enabled him effectually to carry on the war and to check exorbitant interest obtained by the bankers." "But," he mildly adds, "though he hath put a stop to the trade and gain of the bankers, yet he would be unwilling to ruin them, and oppress so many families as are concerned in those debts." This he lays as a ground for a large supply which he requires to be speedily granted before any inquiry into the manner in which the public difficulties had arisen. He then comes to "the Declaration of Indulgence," and if he was not a party to the original treaty with Louis, originated by Clifford for the establishment of the Roman Catholic religion in England, being now well acquainted with its contents, he ascribes the suspension of the penal laws to the King's regard for toleration. "He loves not blood nor rigorous severities, but where mild or gentle ways may be used by a wise prince, he is certain to choose them. The Church of England and all good Protestants have reason to rejoice in such a Head and such a Defender. His Majesty doth declare his care and concerns for the Church, and will maintain her in all her rights and privileges equal if not beyond any of his predecessors." Having urgently pressed for a supply, we have this modest peroration, with a sneer at "*The Triple Alliance.*" "Let me conclude, nay, let us all conclude with blessing God and the King. Let us bless God that he hath given us such a King. Let us bless the King for taking away all our fears, and leaving no room for jealousies. Let us bless God and the King that our religion is safe; that the Church of England is the care of our Prince; that parliaments are safe; that our properties and liberties are safe. What more hath a good Englishman to ask but that this King may long reign, and that this 'TRIPLE ALLIANCE,' of King, parliament, and people may never be dissolved?"*

Shaftesbury, much ashamed of this speech when he had become a patriot, pretended that it had been "settled in the Council," and that it expressed the King's sentiments only, not his own. But it is so racy and characteristic that no man in England could have composed it except Shaftesbury himself; and he could not palliate his guilt by the unconstitutional doctrine that, instead of the speech of the King being liable to censure as the speech of the Minister, the speech of the Minister is sacred from censure as the speech of the King. The truth is, that at this moment, he thought of nothing but how he might outstrip all others in complying with the royal inclination; and he succeeded so well, that Charles declared, "My Chancellor knows more law than all my Judges, and more divinity than all my Bishops."

* 4 Parl. Hist. 503.

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But he became tired of routine business and the life of a mere *roué;* [A. D. 1667.] and seeing with satisfaction the King's growing dislike to Clarendon, he took every opportunity of widening the breach between them. By the death of Lord Southampton, in May, 1667, all restraint was removed, and he entered into a strict alliance with Arlington and Clifford for Clarendon's overthrow. The Treasury was put into commission against Clarendon's strong opinion, and Shaftesbury contrived to get himself named the first efficient Commissioner, still retaining his office of Chancellor of the Exchequer. His influence from henceforth grew daily; he managed to make all the odium of the Dutch war fall upon the Chancellor, who had from the beginning disapproved of it; he aggravated the discontent of Cavaliers, Dissenters, and Roman Catholics, pointing out the Chancellor as the author of all their grievances; and he incited Lady Castlemaine to seek revenge upon the man who, to be sure, had earnestly tried to prevail upon the Queen to receive her as a lady of the bedchamber, but who had given her mortal offence by forbidding his wife to visit her. After a hard [AUG. 31, 1667.] struggle they spirited up the King to take the Great Seal from Clarendon, and, as a temporary arrangement, to give it to Sir Orlando Bridgeman. Shaftesbury probably had thought of it for himself ever since it was promised to him by Cromwell; but neither the Court nor the public were yet at all prepared to see such a successor of Sir Thomas More and Lord Ellesmere, and his pretensions could not at present be put forward. If either Sir Jeffry Palmer or Sir Heneage Finch, who with great reputation filled the offices of Attorney and Solicitor General, had been appointed, there might have been some difficulty in removing them; but Bridgeman, from his age, could not hold the Seal many years; and from his want of political importance might be set aside at pleasure.

The expectant Chancellor zealously co-operated with those whose [SEPT. 1667.] object it was,—not to bring Clarendon to the scaffold, but to compel him to fly the country,—so that neither by the interest of the Duke of York, or a relenting of the King, he might ever recover power. When the impeachment for high treason came up from the Commons, with a requisition that the accused should be immediately imprisoned, Shaftesbury strenuously resisted the application, on the ground that the Commons had specified no particular act of treason; but he supported the bill by which Clarendon was banished for life, and was rendered liable to instant execution if he ever again set foot on English ground.*

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It has been suggested that, being now as keen a Protestant as when he denounced the Popish plot, it was on the enlightened principles of toleration that he supported "the Declaration of Indulgence," to which he induced the Lord Keeper Bridgeman to put the Great Seal. Unluckily, at this time he knew that Charles had been reconciled to Rome, and that the Declaration was a measure preparatory to the King's avowal of his conversion. He was too penetrating a genius not to discover that religious toleration was highly expedient; but, for the sake of his ambition, he would have been ready to prosecute Catholics or Protestants with indiscriminate zeal.

Although Clifford certainly was the first to propose the shutting up of the Exchequer to the Council, there is great reason to think that Shaftesbury, who had the sole management of the finances as Chancellor of the Exchequer and Lord Commissioner of the Treasury, originated the nefarious scheme; and, at all events, he supported and defended it.

By this conduct he rose into unbounded favour with the King, who, though he afterwards pronounced him "the weakest and [A.D. 1672.] wickedest man of the age," now professed the highest admiration not only of his agreeable manners, but of the boldness, energy, and originality of his genius as a statesman. In anticipation of greater advancement, as a reward for his services in closing the Exchequer, he was created Earl of Shaftesbury. It is said that he was offered the Treasurer's staff, but that, on account of the national insolvency, for which he knew no real cure, he declined it.

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Houses on a question of privilege. This he dexterously inflamed to such a pitch of violence, that it threatened a public convulsion; and it could only be appeased by putting a sudden end to the session.

At this time it happened that appeals were brought to the House of Lords from the Court of Chancery in three suits, in which members of the House of Commons were the respondents, and they received notice to appear at the bar of the House of Lords to hear the appeals argued and adjudged.

Writs of error from the Courts of common law had been brought in the House of Lords without dispute from a very remote era; but appeals in Equity suits were of very recent origin, and their legality had been denied. On Shaftesbury's suggestion, the matter was taken up in the Commons, and all those over whom he had influence joined in a vote which was nearly unanimous and seemed wholly unconnected with politics, "that the notice served upon the members of that House to appear at the bar of the House of Lords was a breach of privilege." Shaftesbury himself, in the Upper House, strongly insisted on their right to hear appeals from the Courts of Equity, and that it could make no difference whether the parties were or were not members of the House of Commons; otherwise a denial of justice must follow. The Commons, in a fury, which court and country party shared, committed Shirley and Stoughton, two of the appellants, to the Tower,—resolved "that to prosecute in the House of Lords any cause against a member of their House was a breach of privilege;"—declared "that no appeal lay from the Courts of Equity to any other tribunal;"—and ordered that four barristers who, by order of the Lords, had pleaded before that House in one of the appeals, should be taken into custody. Shaftesbury, delighted to see the quarrel go on so gloriously, made a long and inflammatory speech in defence of the rights of the peerage,—and, describing the imprisonment of the four barristers as an insupportable insult, moved that they should be immediately set at liberty by order of the House. The resolution was carried with tumultuous applause, and the captive barristers were forcibly rescued by the Usher of the Black Rod, the officer of the Lords,—from the Serjeant at arms, the officer of the Commons,—who was so frightened by his loss that he suddenly absconded, to escape the punishment of his pusillanimity. But the enemies of the Test Bill declared in the Commons, that "if this outrage were submitted to, not only the privileges of the Commons, but the liberties of England were for ever subverted," and an order was made that the four barristers should be recaptured. Next morning, Speaker Seymour passing up Westminster Hall saw one of them, Pemberton (afterwards Chief Justice), and with the assistance of some of the officers of the House took him prisoner, and lodged him in "Little Ease."* The other three† were arrested in the Court of King's Bench by the new Serjeant at Arms, eager to show his superior courage,—and all

* For this exploit the Speaker received the special thanks of the House. 4 Parl. Hist. 733.

† Sir John Churchill, Mr. Serjeant Pecke, and Mr. Porter.

the four, being brought to the bar of the House, were committed to the Tower.

At the suggestion of the ministers the King attempted to appease the feud, and addressing the two Houses at Whitehall, told them "they were the dupes of men enemies to him and to the Church of England, who were indifferent about privilege, and only sought a dissolution, whereby a measure of great importance to the peace of the kingdom might be defeated." He then very unadvisedly talked in a slighting manner of questions of privilege, and intimated an intention of deciding this controversy in a summary manner by his own authority.*

Shaftesbury took advantage of this indiscretion, and the *esprit de corps* absorbing for the moment the love for the test, he hurried on the Lords to make an order on the Lieutenant of the Tower to set the four barristers at liberty, and, on a refusal, to resort to the novel process of issuing writs of *habeas corpus*, commanding the Lieutenant to produce his prisoners before the King in his High Court of Parliament. The Lord Keeper, who well saw the drift of this proceeding, was himself ordered to sign and seal the writs, and to send them to be executed by a sufficient force. The Commons, on the other hand, resolved "that the Serjeant at Arms attending this House be protected against all persons that shall any ways molest or hinder him from executing his office;" and they passed resolutions "that no commoners of England, committed by the order or warrant of the House of Commons for breach of privilege, ought, without order of the House, to be by any writ of *habeas corpus*, or any other authority whatever, made to appear, or answer, or receive any determination in the House of Peers." 2. "That the order of the House of Peers for issuing writs of *habeas corpus* concerning the four barristers committed by the House is insufficient and illegal." 3. "That the Lord Keeper be informed of these resolutions, so that the said writs of *habeas corpus* may be superseded as contrary to law and the privileges of the House."

Thus was the dispute brought to the verge of civil war,—and, to preserve the public tranquillity, the Government was driven to abandon the Test Bill. The morning after these resolutions had been passed, the King came to the House of Lords, and, the Commons being summoned, he declared that "those unhappy differences between his two Houses were grown to such a height that he found no possible means of putting an end to them but by a prorogation."† [June 9, 1675.]

I conceive that for tactics there is no parliamentary campaign more brilliant than this of Shaftesbury. Bishop Burnet says, that "in one of the debates on the Test Bill he spoke a whole hour against the non-resistance clause; and that, though his words were watched so that it was resolved to send him to the Tower if he had uttered any thing that could be laid hold of, he spoke both with so much boldness and so much

* 4 Parl. Hist. 721.

† 4 Parl. Hist. 740. Lords' Journ. 1675. Com. Jour. 1675. Marvell, i. 517. Burnet, ii. 75.

caution that, while he provoked the Court extremely, no advantage could be taken against him."* But all this was nothing compared to his dexterity in playing off the two Houses against each other on the question of privilege. Such fervour did he excite in the Commons, that no courtier had the courage to oppose the resolutions against the encroachments of the Lords, and they passed *nemine dissentiente.* In the Lords, although at the head of a very small political party, he so manœuvred, that the resolutions against the illegal proceedings of the Commons, though highly distasteful to the Court, were carried by a large majority, composed chiefly of supporters of the "Test Bill," which they were framed to defeat, and he carried along with him the whole House, except a few Bishops and placemen. He now published a pamphlet under the title of "A Letter from a Person of Quality to a Friend in the Country," in which he was assisted by Locke, purporting to detail the debate on the subject of the non-resisting test.

Both Houses meeting after a recess of four months, the Court hoped [Oct. 13, 1675.] that now a supply might be granted, which would make way for the reintroduction of the "Test Bill;" but a most injudicious motion was made and carried, "that the pamphlet entitled *A Letter from a Person of Quality to a Friend in the Country*, was a lying, scandalous, and seditious libel, and that it be burned by the hands of the common hangman." Shaftesbury durst not avow the publication, and could hardly resist the motion; but he had his revenge by moving "that a day be appointed for hearing at the bar the appeal of *Shirley* v. *Fagg.*" A most animated debate ensued, in which the courtiers tried to get rid of the difficulty, by a proposal to adjourn all judicial business for six weeks. We have a full report of his reply, which shows us the great dexterity with which he addressed himself to the feelings and prejudices of his audience. He thus began: "My Lords, our all is at stake, and therefore you must give me leave to speak freely before we part with it." He then goes over the different topics adduced by his opponents,—dwelling with peculiar severity on the arguments of the Bishop of Salisbury and the Lord Keeper. He reminds them, in a taunting manner, of the arrest of the four barristers for pleading by their order at their bar: "How far the pretended privilege of the House of Commons, their servants, and those they own, doth extend, Westminster Hall may with grief tell your Lordships. And, my Lords, we are sure it doth not stop here, for they have already, *nem. con.*, voted against your Lordships' power of appeals from any Court of Equity; so that you may plainly see where this caution and reason of state means to stop;—not one jot short of laying your whole judicature aside. The poorest Lord, if birthright of the peerage be maintained, has a fair prospect before him for himself or his posterity; but the greatest title, with mere present power and riches, is but a mean creature, and maintains nobles in absolute monarchies no otherwise than by servile and low flatteries. My Lords, it is not only your in-

* Burnet, i. 384.

terest, but the interest of the nation, that you maintain your rights; for let the House of Commons and gentry of England think what they please, there is no Prince that ever governed without a nobility or an army; if you will not have one you must have the other, or the monarchy cannot long support or keep itself from tumbling into a democratical republic. My Lords, would you be in favour with the King? Do not put yourselves out of a future capacity to be considerable in his service. I will serve my Prince as a Peer, but will not destroy the Peerage to serve him." He next attacks the Bishops in a manner which shows that the venerable heads of the Church were not held in such reverence then as in our time. Defending the purity of the judicial decisions of the House of Lords, in spite of attempts by the Court to corrupt them, he says, "It was come to that pass, that men even hired or borrowed of their friends handsome sisters or daughters to deliver their petitions; but yet for all this, I must say that your judgments have been sacred, unless in one or two causes, *and those we owe most to that Bench from whence we now apprehend the most danger*." He felt that he carried the House so completely along with him, that he did not hesitate to ridicule the "Laudean doctrine of *the Divine right of Kings*," and he thus practically concluded: "You see your duty to yourselves and the people, and that it is not really the interest of the House of Commons, *but may be the inclination of the Court*, that you lose the power of appeals. But I beg our House not to be *felo de se*, but that your Lordships would take in this affair the only course to preserve yourselves, and appoint a day, this day three weeks, for the hearing of this appeal." The motion was carried by a large majority, and notice was served on Sir John Fagg, M. P., to appear at the bar of the House on the day appointed. An order was made at the same time that the appellant and his counsel should have the protection of the House.*

The Commons were instantly in a flame, and renewed all the violent resolutions of the former session. Shaftesbury followed up the blow by inducing Lord Mohun to move [Nov. 16, 1675.] an address to dissolve the Parliament, which had now sat fourteen years, and could no longer be considered as justly representing the people. The Duke of York and the Catholic Peers were so disgusted with Danby's ultra-protestant policy, that they joined Shaftesbury on this occasion; the Minister was out-voted by the Peers present, and by calling proxies obtained only a majority of two.

A violent protest, drawn by Shaftesbury, against the rejection of the address, was entered next morning in the Journals. Fifteen Peers had signed it, and others were preparing to sign it, when the King made his appearance on the throne, and at one blow prorogued parliament for the unexampled period of one year and three months.†

Shaftesbury was assailed by many pamphlets, imputing to him the loss of the Test Bill, the quarrel about privilege, and the distracted state

* 4 Parl. Hist. 791.

† 4 Parl. Hist. 803.

of the country. One of them described him as "a fairy fiend that haunted and deluded both Houses." He brought an action of defamation against Lord Digby, for saying to him at a county meeting, "You are against the King, and for seditions and factious aid for a Commonwealth, and, by God, we will have your head next parliament." He recovered a verdict with 1000*l.* damages and costs.*

After this protracted and stormy recess, the same parliament again met (its 15th session) in February, 1677. The ground now seized by Shaftesbury was, that in point of law the parliament must be taken to have been dissolved, and that there was no longer any lawful parliament in existence. As soon as the King had withdrawn he put up Buckingham to make this objection, and to deliver an argument he himself had prepared, "that a continuous prorogation for more than a year was tantamount to a dissolution, by virtue of the statutes 4 Ed. III. c. 14, and 36 Ed. III. c. 10, which require *that a parliament be holden every year once, and more often if need be:* now, on the last prorogation, the present parliament could not meet within a year,—and as the King could not be supposed to have meant to have put it out of his power to obey the law, the just intendment was that he dissolved the old parliament, so that he might within the year call a new one as the law requires,—an intendment greatly strengthened by the consideration that nearly seventeen years had elapsed since this parliament had been elected, and that it would be indecent to impute a design to the King to make it last during his whole reign."

[A.D. 1677.]

As soon as Buckingham sat down, a motion was made that he be called to the bar for the insult which he had offered to the House, and the Lord Keeper resorted to the miserable quibble, that the words "if need be" override the whole clause, leaving it to the King to consider whether there was any occasion to call a parliament even once a year,—and went so far as to hint at the doctrine that no act of parliament interfering with the essential prerogative of the Crown in calling or dissolving parliaments is binding. Shaftesbury was in hopes of aid from the Catholic Peers; but they remaining silent, he was called up, and he gallantly insisted that the individuals by whom he was surrounded were no House of parliament, and that no one was bound to respect their proceedings,—treating with scorn the Lord Keeper's construction of the statute, and his unconstitutional limitation of the supremacy of parliament,—"for which the Lord Keeper ought to be called to the bar, instead of the Duke of Buckingham." He was supported by Lords Salisbury and Wharton.

After a debate of five hours it was resolved that Buckingham, Shaftesbury, Salisbury, and Wharton, should retract their opinion, acknow-

* Juries were then sometimes much more liberal, giving 100,000*l.* in actions of defamation and scan. mag. On this occasion the foreman said "they would have given larger damages, but that they considered Lord Digby's father (Earl of Bristol) was still alive, Lord Digby had a very small estate in hand, and they did not wish to perpetuate a feud between the two families."

ledge that their conduct was "ill advised," and beg pardon of the King and the House. Shaftesbury, as the chief delinquent, was first commanded to submit, and, on his refusal, was committed to the Tower "during the pleasure of the King and the House." There he lay above a year,—and he could not recover his liberty without considerable humiliation.

This was a bold but an imprudent movement, for he might have foreseen that the notion of a virtual dissolution would be highly distasteful to the Commons, and not well relished in the Lords, so that the support of it would place him at the mercy of his enemies. Buckingham, Salisbury and Wharton, who were committed along with him, after an imprisonment of a few months, made their submission and were discharged; but he still disdained such a course, and suing out a writ of *habeas corpus* before the Court of King's Bench, he insisted that the commitment was illegal, and that he was entitled, as a matter of right, to be unconditionally set free, or at all events to be bailed. [JUNE 27, 1677.]

It must have been a scene of considerable interest when an Earl, an Ex-Lord Chancellor, and the head of a great political party was brought up in custody, and, after arguments from his counsel, pleaded his own cause. He put very strongly the objection that the warrant of commitment was bad, being merely "for high contempts against this House," without specifying what the contempts were, so that he might have been committed for something wholly frivolous, as the cut of his beard, or something that he had done in the strict discharge of his duty,—as obeying the process of the law—which either House of parliament might construe into a contempt. He powerfully urged that, as a warrant in this form by the King or any other magistrate would be void, there could be no reason why we should bind our necks to the yoke of assemblies established to protect—not to extinguish—our liberties. To the taunt of the Attorney-General, that being a Peer he should stand up for the privileges of the peerage, he said, "It is true I am a Peer, and no man hath a greater reverence or esteem for the Lords than myself; but I hope my being a Peer shall not lose my being an Englishman, or make me to have less title to MAGNA CHARTA and the other laws of English liberty. I desire your Lordships well to consider what rule you make in my case, for it will be a precedent that in future ages may concern every man in England."

Rainsford, C. J.—"This Court hath no jurisdiction of the cause, and therefore the form of the return is not considerable. We ought not to extend our jurisdiction beyond its due limits."*

Shaftesbury was remanded, and found himself in "a false position."

* 6 St. Tr. 1296. The precedent hitherto has been respected. In the case of the Sheriffs of Middlesex, which occurred when I was Attorney-General and a member of the House of Commons, I settled the warrant of commitment, and took care that it should be in this general form. Some observations were made by the Court of King's Bench as to the impropriety of preventing them from seeing the true cause of commitment; but they held it sufficient.

He was, at first, visited in the Tower by all the factious; but an order was made that no one should be admitted to him without the King's express permission. He languished in the Tower without any prospect of getting himself liberated, and he had the mortification to learn that, meanwhile, in his absence, things were marvellously quiet in the House of Lords, and that Danby was carrying every thing before him. He in vain wrote spirited and pathetic letters to the King and the Duke of York, appealing to their justice and generosity.

At last, in February, 1678, he condescended to petition that he might be brought to the bar to apologise for the offence he had given. His application to the Court of King's Bench was now represented as the great aggravation of his crime, and Danby tried to shut him out from a hearing, on account of some contemptuous words respecting the House of Lords he was charged with then using—but the witness called could not prove them.

On his knees was the "Patriot" compelled to repeat, after the Lord Chancellor, the following mortifying palinode: "I, Anthony Earl of Shaftesbury, do acknowledge that my endeavouring to maintain that the parliament is dissolved was an ill-advised action, for which I humbly beg the pardon of the King's Majesty, and of this most Honourable House; and I do also acknowledge that my bringing of a *habeas corpus* in the King's Bench was a high violation of your Lordships' privileges, and a great aggravation of my former offence, for which I likewise most humbly beg the pardon of this most Honourable House."

The Lords, with white staves, were ordered to inform the King that [Feb. 27, 1678.] the House was satisfied, and Shaftesbury was allowed to resume his seat.

During the short glimpse of power and favour which he enjoyed two years after, he contrived by a vote of the House of Lords to have all these proceedings condemned as unparliamentary and unconstitutional, "and that the entry of them on the Journals should be vacated, so that they might never be drawn into precedent for the future."*

Upon his discharge, he found his influence very much diminished. [A. D. 1678.] Danby, whose policy in the race for popularity was to take the wind out of the sails of his competitor, had gained great popularity with the Protestants. The marriage of the Princess Mary, the eldest daughter of the Duke of York and next in succession to the Crown, with the Prince of Orange, now at the head of the Protestant interest in Europe, had been followed up by the treaty of Nimeguen, which drew the Protestant states into closer amity, and placed on a respectable footing the foreign relations of the country. Shaftesbury resumed his opposition with vigour, but down to the prorogation in the end of June, could find no opportunity of seriously embarrassing the measures of the government, and he agitated against the Duke of York and the Papists with little hope of ever again being the idol of a great party.†

* Lords' Jour., Nov. 13, 1680. † 4 Parl. Hist. 977—1004.

This was only a lull; the hurricane soon burst forth; Shaftesbury directed it,—and he was more formidable than at any former period of his career.

CHAPTER LXXXIX.

CONTINUATION OF THE LIFE OF LORD SHAFTESBURY TILL THE DISSOLUTION OF THE OXFORD PARLIAMENT.

THE charge stoutly adduced against Shaftesbury of having been the inventor of the Popish Plot, and of having suborned Titus Oates to bring it forward, is unsupported by any reasonable evidence, and is, I think, wholly unfounded; but no one can deny that he early caught at this delusion as an engine of annoyance to his adversaries, and that he unscrupulously used it for his ambitious purposes, regardless of the ruin which it brought on individuals, and of the public calamities which it caused. As the monstrous improbability of the tale negatives the notion that he framed it, so it prevents us from supposing that he believed in it. Yet he pretended to give implicit credit to all its wildest fictions; he was mainly instrumental in propagating the general panic on the opportune murder of Sir Edmonsbury Godfrey; he joined in the cry that this worthy Protestant magistrate had been assassinated by the Papists for having taken Oates's evidence; he suggested to the Londoners to prepare for the defence of the City, as if a foreign enemy were at its gates; and he was supposed to have suggested to Sir Thomas Player, the Chamberlain, the noted saying, "that were it not for these precautions, all the Protestant citizens might rise next morning with their throats cut." [A. D. 1678.]

On the meeting of parliament, Danby, that he might anticipate Shaftesbury, brought forward the subject of the Popish Plot in the Lords, contrary to the advice of the King, who said, "You will find you have given the parliament a handle to ruin yourself as well as to disturb all my affairs, and you will surely live to repent it." Shaftesbury soon took the matter out of Danby's hands, and carried resolutions for a committee to inquire into the horrible conspiracy,—for the removal of Popish recusants from London,—for appointing the train-bands of London and Westminster to be in readiness,—for sending Lords Powis, Stafford, Arundel, Peters, and Bellasis to the Tower, as Papists, and traitors, and for declaring "that there hath been and still is a damnable and hellish plot continued and carried on by Popish recusants for assassinating the King, subverting the government, and rooting out and destroying the Protestant religion."* He was chairman of the Com- [OCT. 21, 1678.] [A. D. 1678.]

* 4 Parl. Hist. 1022.

mittee of the House of Lords for prosecuting the inquiry; and, superseding the government who wished to conduct it, took the whole management of it into his own hands. He was always at his post—receiving informations, granting warrants for searches and arrests, examining and committing prisoners, and issuing instructions to officers, informers, and gaolers. He converted, with consummate art, every succeeding occurrence into a confirmation of the plot, and by inflaming the passions of the people was able to direct them at his pleasure. From being lately nearly isolated as a party-leader, and somewhat contemned for his inglorious release from imprisonment, the popular delirium now placed him at the head of a decided majority in both Houses, and the ministers were allowed to remain in office only *till it* suited his purpose to remove them.

He greatly abused the exorbitant power which he now enjoyed. His first measure was the bill for a Test by which Roman Catholics should be excluded from sitting in either House of parliament. He began it in the House of Commons, where it passed by acclamation. In the upper House there was a strong feeling with many in favour of the Roman Catholic Peers,—men of undoubted honour and loyalty,—and the representatives of the most illustrious families in England. The bill likewise caused alarm as an attack on the hereditary rights of the peerage; for if one class might be disqualified from acting in their legislative capacity for adhering to the religion of their ancestors, the same injustice might be done to others on some new pretext, and the whole body would depend upon the arbitrary will of the minister, or the capricious tyranny of the multitude, prompted by an unprincipled demagogue.

Shaftesbury overcame these obstacles by the fresh discoveries of Titus Oates; and, a clause being introduced into the Bill for excepting the Duke of York from its operation, it received the royal assent.* The injustice of this statute, which was passed in a moment of delusion and violence, could not be remedied for a period of 150 years; and still we continue to feel its mischievous consequences. If our Roman Catholic brethren had been allowed to sit in parliament as they had continued to do since the Reformation, the enmity between the followers of the two religions would probably soon have died away, and, all enjoying the same civil rights in England and in Ireland, all might have been equally attached to the law and constitution, and we might have escaped the discords and jealousies which have long weakened the empire, and have sometimes threatened its dismemberment. This statute, so eagerly clung to by the pious and the orthodox as the safeguard of our religion, was undoubtedly the handiwork of the profligate and sceptical Shaftesbury. He ere long made some compensation, by a law for securing personal liberty; but in estimating his merits, the disqualification of Roman Catholics to sit in parliament must be considered a tremendous set-off against "the Habeas Corpus Act."

* 30 Car. 2, St. 2. 4 Parl. Hist. 1024.

The factious leader further moved in the House of Lords for an address to the King to remove the Duke of York from his presence and councils. [Nov. 4, 1678.] This was defeated by James getting up in his place and declaring that he had already ceased to be a member of the Privy Council;—whereupon the candid and virtuous Lord Russell was induced to withdraw a similar motion, which, from the purest motives, he had made in the Commons.*

The trials now began—the most disgraceful in our judicial history—against those accused of being implicated in the Popish Plot. Shaftesbury had only to look quietly on while Judge Scroggs and demented juries were eager to credit perjury, that they might convict innocent men whom they had prejudged.

Some victims being offered up to feed the popular fury, it was thought full time that Danby, the Lord Treasurer, should be precipitated from power. Montague, the ambassador at Paris, arrived as a useful ally, and disclosing the secret negotiations with the court of France, a motion was carried in the House of Commons for Danby's impeachment for high treason. The King during some time stood by his minister, and, to procure him a respite, dissolved the parliament, that he might get rid of a House of Commons which, having sat nearly eighteen years, had entirely altered its character, and from being the most obsequious to the Court, had become one of the most formidable that had ever been assembled,—notwithstanding the notorious bribery practised to corrupt its members.†

The state of the Exchequer rendered a parliament indispensable, and a new one was called, to meet in forty days. Shaftesbury was indefatigable in superintending the elections, and, as [Jan. 1679.] might easily have been anticipated, from the present ferment in the public mind, they turned out decidedly in his favour. [March, 1679.] Danby thought to avert the storm which was pending over him, by contriving that, before the opening of the session, the Duke of York should withdraw to Brussels; but the Court was beaten in the choice of a Speaker, andthe King resorted to the ungracious exercise of the prerogative, of disallowing the Speaker elected by a majority of the House.

The impeachment was immediately revived. To stop it, a pardon was granted to the minister, to which the King affixed the Great Seal with his own hand; [March 20, 1679.] but Shaftesbury maintained the doctrine, that a pardon cannot be pleaded in bar to a parliamentary impeachment, so as to prevent inquiry and sentence, although, after sentence, the Crown may remit the punishment. The Lords yielded to this doctrine, and issued a warrant to arrest the Earl of Danby. Upon this he absconded; and a bill was passed to attaint him, unless he should surrender. He did surrender, and Shaftesbury had the gratification of seeing his adversary sent off to the Tower on a capital charge.

To leave the Court no breathing-time, he made a motion in the Lords, for a committee of the whole House "on the state of the nation," which

* 4 Parl. Hist. 1025.

† 4 Parl. Hist. 1074.

Houses on a question of privilege. This he dexterously inflamed to such a pitch of violence, that it threatened a public convulsion ; and it could only be appeased by putting a sudden end to the session.

At this time it happened that appeals were brought to the House of Lords from the Court of Chancery in three suits, in which members of the House of Commons were the respondents, and they received notice to appear at the bar of the House of Lords to hear the appeals argued and adjudged.

Writs of error from the Courts of common law had been brought in the House of Lords without dispute from a very remote era ; but appeals in Equity suits were of very recent origin, and their legality had been denied. On Shaftesbury's suggestion, the matter was taken up in the Commons, and all those over whom he had influence joined in a vote which was nearly unanimous and seemed wholly unconnected with politics, "that the notice served upon the members of that House to appear at the bar of the House of Lords was a breach of privilege." Shaftesbury himself, in the Upper House, strongly insisted on their right to hear appeals from the Courts of Equity, and that it could make no difference whether the parties were or were not members of the House of Commons ; otherwise a denial of justice must follow. The Commons, in a fury, which court and country party shared, committed Shirley and Stoughton, two of the appellants, to the Tower,—resolved "that to prosecute in the House of Lords any cause against a member of their House was a breach of privilege ;"—declared "that no appeal lay from the Courts of Equity to any other tribunal ;"—and ordered that four barristers who, by order of the Lords, had pleaded before that House in one of the appeals, should be taken into custody. Shaftesbury, delighted to see the quarrel go on so gloriously, made a long and inflammatory speech in defence of the rights of the peerage,—and, describing the imprisonment of the four barristers as an insupportable insult, moved that they should be immediately set at liberty by order of the House. The resolution was carried with tumultuous applause, and the captive barristers were forcibly rescued by the Usher of the Black Rod, the officer of the Lords,—from the Serjeant at arms, the officer of the Commons,—who was so frightened by his loss that he suddenly absconded, to escape the punishment of his pusillanimity. But the enemies of the Test Bill declared in the Commons, that "if this outrage were submitted to, not only the privileges of the Commons, but the liberties of England were for ever subverted," and an order was made that the four barristers should be recaptured. Next morning, Speaker Seymour passing up Westminster Hall saw one of them, Pemberton (afterwards Chief Justice), and with the assistance of some of the officers of the House took him prisoner, and lodged him in "Little Ease."* The other three† were arrested in the Court of King's Bench by the new Serjeant at Arms, eager to show his superior courage,—and all

* For this exploit the Speaker received the special thanks of the House. 4 Parl. Hist. 733.

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At the suggestion of the ministers the King attempted to appease the feud, and addressing the two Houses at Whitehall, told them "they were the dupes of men enemies to him and to the Church of England, who were indifferent about privilege, and only sought a dissolution, whereby a measure of great importance to the peace of the kingdom might be defeated." He then very unadvisedly talked in a slighting manner of questions of privilege, and intimated an intention of deciding this controversy in a summary manner by his own authority.*

Shaftesbury took advantage of this indiscretion, and the *esprit de corps* absorbing for the moment the love for the test, he hurried on the Lords to make an order on the Lieutenant of the Tower to set the four barristers at liberty, and, on a refusal, to resort to the novel process of issuing writs of *habeas corpus*, commanding the Lieutenant to produce his prisoners before the King in his High Court of Parliament. The Lord Keeper, who well saw the drift of this proceeding, was himself ordered to sign and seal the writs, and to send them to be executed by a sufficient force. The Commons, on the other hand, resolved "that the Serjeant at Arms attending this House be protected against all persons that shall any ways molest or hinder him from executing his office;" and they passed resolutions "that no commoners of England, committed by the order or warrant of the House of Commons for breach of privilege, ought, without order of the House, to be by any writ of *habeas corpus*, or any other authority whatever, made to appear, or answer, or receive any determination in the House of Peers." 2. "That the order of the House of Peers for issuing writs of *habeas corpus* concerning the four barristers committed by the House is insufficient and illegal." 3. "That the Lord Keeper be informed of these resolutions, so that the said writs of *habeas corpus* may be superseded as contrary to law and the privileges of the House."

Thus was the dispute brought to the verge of civil war,—and, to preserve the public tranquillity, the Government was driven to abandon the Test Bill. The morning after these resolutions had been passed, the King came to the House of Lords, and, the Commons being summoned, he declared that "those unhappy differences between his two Houses were grown to such a height that he found no possible means of putting an end to them but by a prorogation."† [June 9, 1675.]

I conceive that for tactics there is no parliamentary campaign more brilliant than this of Shaftesbury. Bishop Burnet says, that "in one of the debates on the Test Bill he spoke a whole hour against the non-resistance clause; and that, though his words were watched so that it was resolved to send him to the Tower if he had uttered any thing that could be laid hold of, he spoke both with so much boldness and so much

* 4 Parl. Hist. 721.

† 4 Parl. Hist. 740. Lords' Journ. 1675. Com. Jour. 1675. Marvell, i. 517. Burnet, ii. 75.

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Thus was the dispute brought to the verge of civil war,—and, to preserve the public tranquillity, the Government was driven to abandon the Test Bill. The morning after these resolutions had been passed, the King came to the House of Lords, and, the Commons being summoned, he declared that "those unhappy differences between his two Houses were grown to such a height that he found no possible means of putting an end to them but by a prorogation."† [JUNE 9, 1675.]

I conceive that for tactics there is no parliamentary campaign more brilliant than this of Shaftesbury. Bishop Burnet says, that "in one of the debates on the Test Bill he spoke a whole hour against the non-resistance clause; and that, though his words were watched so that it was resolved to send him to the Tower if he had uttered any thing that could be laid hold of, he spoke both with so much boldness and so much

* 4 Parl. Hist. 721.

† 4 Parl. Hist. 740. Lords' Journ. 1675. Com. Jour. 1675. Marvell, i. 517. Burnet, ii. 75.

Houses on a question of privilege. This he dexterously inflamed to such a pitch of violence, that it threatened a public convulsion; and it could only be appeased by putting a sudden end to the session.

At this time it happened that appeals were brought to the House of Lords from the Court of Chancery in three suits, in which members of the House of Commons were the respondents, and they received notice to appear at the bar of the House of Lords to hear the appeals argued and adjudged.

Writs of error from the Courts of common law had been brought in the House of Lords without dispute from a very remote era; but appeals in Equity suits were of very recent origin, and their legality had been denied. On Shaftesbury's suggestion, the matter was taken up in the Commons, and all those over whom he had influence joined in a vote which was nearly unanimous and seemed wholly unconnected with politics, "that the notice served upon the members of that House to appear at the bar of the House of Lords was a breach of privilege." Shaftesbury himself, in the Upper House, strongly insisted on their right to hear appeals from the Courts of Equity, and that it could make no difference whether the parties were or were not members of the House of Commons; otherwise a denial of justice must follow. The Commons, in a fury, which court and country party shared, committed Shirley and Stoughton, two of the appellants, to the Tower,—resolved "that to prosecute in the House of Lords any cause against a member of their House was a breach of privilege;"—declared "that no appeal lay from the Courts of Equity to any other tribunal;"—and ordered that four barristers who, by order of the Lords, had pleaded before that House in one of the appeals, should be taken into custody. Shaftesbury, delighted to see the quarrel go on so gloriously, made a long and inflammatory speech in defence of the rights of the peerage,—and, describing the imprisonment of the four barristers as an insupportable insult, moved that they should be immediately set at liberty by order of the House. The resolution was carried with tumultuous applause, and the captive barristers were forcibly rescued by the Usher of the Black Rod, the officer of the Lords,—from the Serjeant at arms, the officer of the Commons,—who was so frightened by his loss that he suddenly absconded, to escape the punishment of his pusillanimity. But the enemies of the Test Bill declared in the Commons, that "if this outrage were submitted to, not only the privileges of the Commons, but the liberties of England were for ever subverted," and an order was made that the four barristers should be recaptured. Next morning, Speaker Seymour passing up Westminster Hall saw one of them, Pemberton (afterwards Chief Justice), and with the assistance of some of the officers of the House took him prisoner, and lodged him in "Little Ease."* The other three† were arrested in the Court of King's Bench by the new Serjeant at Arms, eager to show his superior courage,—and all

* For this exploit the Speaker received the special thanks of the House. 4 Parl. Hist. 733.

† Sir John Churchill, Mr. Serjeant Pecke, and Mr. Porter.

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having committed himself in mortal strife with the next heir to the Crown, had shown that he had nerve to take any advantage which the law might offer him, without regard to consequences. The Duke was immediately ordered to return to Edinburgh; while Monmouth made a progress through the provinces,—visiting the most celebrated fairs, races, and assemblies of amusement. On these occasions he was much admired for his fine person and courteous manners, and, without putting forth any distinct claims, he was addressed as "His Highness," and was generally received as the King's legitimate son.

Nearly a year and a half had elapsed since parliament was summoned, and its meeting could not be longer delayed. [Oct. 21, 1680.] In the House of Commons, Shaftesbury's supremacy was unshaken; but in the Lords he was looked upon with suspicion and alarm, on account of the violence of his recent proceedings. He planned the campaign with his usual skill. After several votes in support of the right of petitioning, and condemning the efforts of the government to crush it, he brought forward Dangerfield and his "Narrative," to frighten the isle from its propriety; and then he obtained resolutions of the House of Commons, which no one ventured to oppose: "That it is the opinion of this House that parliament ought to proceed effectually to suppress Popery, and to prevent a Popish succession:" "That the Duke of York being a Papist, the hopes of his coming to the Crown have given the greatest countenance and encouragement to the present designs and conspiracies against the King and the Protestant religion:" "That in defence of the King's person and government, and Protestant religion, this House doth declare they will stand by his Majesty with their lives and fortunes; and that if his Majesty should come to any violent death, which God forbid, they will revenge it to the utmost on the Papists."*

On this foundation he ordered the Exclusion Bill to be again introduced.

The bill passed rapidly through the House of Commons; and, on the 15th of November, was brought up by Lord Russell [A.D. 1680.] to the House of Lords, amidst great cheers from members below the bar. Here was to be the mortal struggle. The King warmly espoused the cause of his brother, openly canvassed for votes in his favour, and himself attended the debates upon it,—showing his inclination by significant looks and loud whispers while Peers were addressing the House.

Shaftesbury, nothing daunted, unflinchingly supported his bill; and, after showing the absurdity of indefeasible hereditary right,—the well-settled authority of parliament to alter the succession to the Crown,—the repugnancy of the Romish religion to our constitution,—the violent temper and bigotry of the Duke,—the certain overthrow of our liberties, as well as our religion, if he should ever mount the throne,—and the superiority of the remedy of setting him aside, to that of limiting

* 4 Parl. Hist. 1162.

his powers, as had been proposed,—he turned towards the Bishops, of whom he was most distrustful, and, in a pathetic tone, implored them to have a regard to the civil rights of their fellow-subjects, and to the best interests of the Church of which they were the fathers,—reminding them that they then had it in their power to exclude a Popish Prince by law, and thereby preserve their religion and liberties; but that, if they should lose the present opportunity, they must afterwards either run into rebellion to save themselves, or sit down with the melancholy portion of bondage, ignominy, and repentance.

He was answered by Lord Halifax, who displayed an extent of capacity and a force of eloquence which had never been surpassed in that assembly. This aspiring orator was animated by the greatness of the occasion, by the presence of the King, and by a rivalship with his uncle Shaftesbury, whom, during that day's debate, he for the first time eclipsed. He seems with great felicity to have ridiculed the hypocritical ambition of Monmouth, who had spoken in support of the bill, on the ground that it was necessary to protect the King's life;* and, without saying any thing personally offensive, to have admirably developed the arts, intrigues, and objects of the leader of the Exclusionists. After a debate which lasted till near midnight, the bill was thrown out by a majority of sixty-three to thirty, proxies not being called.† [A.D. 1680.]

Shaftesbury was no doubt actuated by the most factious and unworthy motives; but I must nevertheless give my humble opinion that the bill was a constitutional proceeding, James's conduct as King, and the Revolution of 1688, amply excused its defenders.

This defeat did not quell the courage of the great agitator, conscious of the power he still possessed in the House of Commons and in the country. A few days after there was a committee on a supply bill, which he strongly opposed. He printed and published his Reply, which, if its accuracy may be relied upon, shows that he indulged in the most cutting personalities against the King, who was one of his hearers. A few little specimens may be amusing:—"My Lords, this noble Lord near me hath found fault with that precedent which he supposes I offered to your Lordships concerning the chargeable ladies at Court. I remember no such thing, I said. But if I must speak of them, I shall say as the prophet did to King Saul—'*What meaneth this bleating of the cattle?*' and I hope the King will make the same answer,—'*That he reserves them for sacrifice, and means to deliver them up to please his people;*' for there must be, in plain English, my Lords, a change. We must neither have a Popish favourite, nor Popish mistress, nor Popish counsellor at Court. What I spoke was about another lady, that belongs not to the Court, but, like Sempronia in Catiline's conspiracy, does more mischief than Cethegus."—"My Lords, it is a very hard thing to say we cannot trust the King, and that we have already been de-

* Charles, at this expression, exclaimed in a stage whisper, "The kiss of Judas!"

† All the bishops present, fourteen in number, voted against it.

ceived so often, that we see plainly the apprehension of discontent is no argument at Court; and though our Prince be himself an excellent person, that the people have the greatest inclinations to love, yet I must say he is such an one as no story affords us a parallel of."—"The [A.D. 1681.] transactions between him and his brother are admirable and incomprehensible. The match with a Portugal lady, not likely to have children, was contrived by the Duke's father-in-law, and no sooner effected, but the Duke and his party made proclamation to the world that we are like to have no children, and that he must be the certain heir. He takes his seat in parliament as Prince of Wales,—has his guards about him,—the Prince's lodgings at Whitehall,—his guards on the same floor, without any interposition between him and the King. This Prince changes his religion to make himself a party, and such a party that his brother must be sure to die or be made away with to make room for him."—"The prorogations, the dissolutions, the cutting short of parliaments—not suffering them to have time to look into any thing, have showed what reason we have for confidence in the Court. We are now come to a parliament again,—by what fate or riddle, I cannot guess."—"The Duke is sent away; the House of Commons have brought up a bill to disable him of the Crown; and I think they are, so far, extremely in the right: but your Lordships are wiser than I, and have rejected it. Yet you have thought fit, and the King himself hath made the proposition, to adopt such expedients as shall render him but a nominal prince."—"However, we know who hears us; and I am glad of this, that your Lordships have dealt so honourably and so clearly in the King's presence, that he cannot say he wants a right state of things. He hath it before him, and may take counsel as he thinks fit."*

His next move was to lay on the table of the House of Lords, "A Bill to dissolve the King's marriage with Catherine of Portugal," which he thought might breed a quarrel between the two royal brothers, and greatly embarrass the ministers. In introducing the bill, he professed the most profound respect for the monarchy, and deep reverence for the Protestant religion,—describing this measure as the only means for [A.D. 1681.] saving both, by enabling his Majesty to marry a Protestant princess, by whom he might have legitimate issue, and thus to exclude a Popish successor without violating the usual rule of succession to the Crown, which a majority of their Lordships deemed so sacred. Charles, however, with a fairness and firmness which should make us look with lenience at some of his errors, declared that he would never consent to the disgrace of an innocent woman, and openly canvassed the Peers against the bill,—so that Shaftesbury seeing that he was likely to have a smaller minority upon it than upon the Exclusion Bill, postponed the consideration of it, on different pretences, from time to time, and never brought it to a second reading.†

* I cannot help suspecting that in the Reports which he published of this speech, he introduced several things which he could not have spoken without being sent to the Tower.—See *Life*, by Martyn, ii. 252.

† James's Memoirs, i. 618. Macpherson, i. 109.

But he was abundantly active in the House of Commons, where a great majority was at his beck. He caused several bills to be introduced there, the original draughts of which are still extant in his handwriting,—one, to revive the Triennial Act, which had been so improperly repealed by Lord Clarendon,—a second, to enact that the Judges should hold their offices *quamdiu se bene gesserint*,—a third, to make the levying of money without consent of parliament high treason,—and a fourth, to constitute an association for the safety of his Majesty's person, for defence of the Protestant religion, and preventing the Duke of York or any papist from succeeding to the Crown. None of these met with any serious opposition in the Lower House.

Next, he carried an impeachment against Lord Chief Justice Scroggs, for illegally discharging the Grand Jury of the County of Middlesex, while they were deliberating on the indictment [JAN. 1681.] he had preferred against the Duke of York as a Popish recusant; and he instituted proceedings against the Lord Chief Justice North, and Jeffreys the Recorder of London, for interfering with the right of petitioning.*

The severe chastisement he had received from his nephew Lord Halifax rankled deeply in his mind, and he caused a motion to be made in the Commons for an address to the King to remove this nobleman from his presence and councils for ever. The attempt to defeat it only showed the weakness of the Court, for an [A.D. 1681.] adjournment of the debate, moved by Halifax's friends, was negatived by a majority of 219 to 95; and the address was then carried without a division. When the Committee appointed to draw up the address made their report, the ministerialists unexpectedly rallied, and were in hopes by a manœuvre to reject it; but the debate was kept up till Shaftesbury's adherents arrived in great numbers, and it was then agreed to by a majority of 213 to 101. They did not venture to ask the Lords to concur; but the King, by the advice of the Earl of Halifax, having returned for answer, "that he doth not find the grounds in the address to be sufficient for removing the Earl of Halifax," he got the Commons to pass fresh resolutions, "That there is no security for the Protestant religion, the King's life, or government of this nation, without passing a bill for disabling James Duke of York to inherit the imperial crown of this realm;"—"That until such a bill do pass, this House cannot give any supply to his Majesty:"—and "That George Earl of Halifax, having advised his Majesty against such a bill, has given pernicious counsel to his Majesty, as a promoter of popery, and is an enemy to the King and kingdom." A sudden termination to the session being now apprehended, [JAN. 18, 1681.] these were soon backed by resolutions, "That whoever advised his Majesty to prorogue parliament is a betrayer of the King, the Protestant religion, and of the kingdom of England, a promoter of the French interest, and a pensioner to France:"—"That whoever shall lend

* 4 Parl. Hist. 1224, 1261, 1274, 1216.

any money on the revenue arising from customs or excise, or accept or pay any tally in anticipation of the public revenue, shall be considered a hinderer of the sitting of parliament, and responsible to parliament for the same:"—"That the city of London was burnt by the Papists in 1666, for the introduction of popery and arbitrary power;" and,—"That his Majesty should be addressed to restore the Duke of Monmouth to the offices of which he had been deprived by the influence of the Duke of York."

The last resolution had scarcely been put when the Black Rod knocked at the door, and commanded the Commons forthwith to attend his Majesty in the House of Lords, where a prorogation was announced, which was, in a few days, followed up by a dissolution, and a summons for a new parliament to assemble at Oxford.*

Shaftesbury immediately penned a petition to the King, which was signed by sixteen Peers, attributing the choice of Oxford to the counsels of wicked men, favourers of popery, promoters of French interests, and enemies to the happiness of England, as in such a place the two Houses would be deprived of freedom of debate, and exposed to the swords of the papists who had crept into the ranks of the King's guards. Many addresses of thanks were presented to the Peers who signed it. Halifax, equally active, published a pamphlet, entitled "A seasonable Address to both Houses of Parliament concerning the Succession, the Fears of Popery and arbitrary Government,"—insinuating very plainly that the two great pillars of the Protestant religion, Shaftesbury and Buckingham, had no religion at all, and broadly asserting that the former had only a few months before offered his services to the Duke of York if he might be restored to the office of Lord Chancellor.

[FEB. 1, 1681.]

The City of London began with returning its four former popular members by an immense majority, and instructing them to adhere to their great fellow-citizen, who had proved himself the bulwark of the Prostestant faith. The example was generally followed throughout the kingdom, the electors insisting on paying all the expenses of the popular candidates,—and when the elections were over, Shaftesbury found himself as strong in numbers as he had been in the last parliament,—but many members of the country party privately expressed great alarm at his violence, and to the eyes of the discerning the reaction against him had palpably begun. Unconscious of his danger, he prepared a circular form of instructions to be sent by the different constituencies to the newly-elected members, particularly pressing them to pass a bill to exclude the Duke of York and all Popish successors from the Crown—to insist on an adjustment of the King's prerogative of calling, proroguing, and dissolving parliaments,—to restore the liberty enjoyed by their forefathers of being free from guards and mercenary soldiers—and to refuse all supplies till the nation was secure against popery and arbitrary power.†

[A.D. 1681.]

The King was emboldened by a secret treaty with France, by which

* 4 Parl. Hist. 1175—1295.

† This paper in Shaftesbury's handwriting is still extant.

he was to receive a subsidy of 2,000,000 of livres for the current year, and 500,000 crowns for the two following years—in consideration of which he was to withdraw himself from Spain, and to abet the scheme of Louis for the conquest of the Netherlands. He then proceeded to Oxford, escorted by his horse guards. Shaftesbury, the representatives of London, and the popular leaders followed, armed and attended by a numerous band of armed men wearing round their hats a riband, with the inscription "No Popery! No Slavery!" Oxford had the appearance of the place of meeting of a Polish diet. During the rapid week which the parliament was allowed to sit, Shaftesbury played his part with all his wonted energy,—though not with his wonted discretion.

He opened the business in the House of Lords by denouncing a most irregular proceeding on the last day of the last parliament. [MARCH 21.] Both Houses had passed "a Bill for repealing the 35th of Elizabeth against Protestant Dissenters who do not attend public worship on Sundays in their parish church." This was disagreeable to the King, who wished to keep them dependent on his dispensing power, and to prevent them from being in a better situation than the Roman Catholics, and yet did not like to incur the odium of openly rejecting it by his veto. He therefore directed the clerk privately to remove it from the table of the House of Lords, and the prorogation took place without any notice being taken of it. Shaftesbury now affecting to lay the blame upon the officers, pointed out the gross impropriety of the manner in which the bill had been unconstitutionally got rid of; and the ministers could not refuse him the committee he moved for to inquire into the affair, although they were aware that if the committee ever sat, the truth must come out. They succeeded in getting the meeting of the committee deferred to a distant day,—before which the parliament was dissolved. In the mean time he introduced another bill in the same terms to [A. D. 1681.] repeal the 35th of Elizabeth, to which they did not venture to offer any opposition.

But the two grand measures on which the fate of this parliament turned, were "the Exclusion Bill" and "the impeachment of Fitzharris." The King in his speech had declared his willingness to assent to any expedient by which, in the event of a Catholic Prince succeeding to the throne, the administration of government might be retained in the hands of Protestants, but said he would never depart from his resolution of keeping the succession unbroken. Halifax immediately laid before the House the details of this plan,—by which the Duke of York was to be banished 500 miles from the British dominions during his life; on the demise of the Crown he was to assume the title of King, but all the powers of government were to be transferred to a Regent, to be exercised in the name of the absent Sovereign; the regency to belong, in the first instance, to the Princess of Orange, after her to the Lady Anne, and if James should have a legitimate son educated a Protestant, to continue during the minority of such son and no longer. If Shaftesbury had acted wisely, he would have closed with this proposal, which was only made in the belief that it would be rejected; but, betrayed

into an overweening confidence of victory, he undertook to compel the King to assent to the measure on which he staked all,—total exclusion. He gave the very insufficient reason, that as, according to the doctrine of the lawyers, the descent of the Crown takes away all disabilities from the next heir on whom it descends, James becoming King would claim an indefeasible right to the Sovereign authority, unimpaired by statute;—not observing that the same futile argument might be applied with equal force against his own favourite Exclusion Bill. This, after a two days' debate, was again ordered to be introduced in the House of Commons, and was read a first time by a great majority; but the public began more strongly to take part with the King, and to apprehend a civil war from an attempt to put Monmouth on the throne,—which now appeared to be the object of the total exclusion of the Duke of York,—rather than a regard for religion or liberty.

Shaftesbury fell into a still greater error by his unconstitutional attempt to have a commoner tried and convicted of a capital offence before the House of Peers. [A.D. 1681.] There had been a great struggle between the two parties, which of them should have as a tool a miscreant of the name of Fitzharris, who was ready to accuse himself and others of any atrocities to suit the purposes of those who should pay him best. He was to have been brought by Shaftesbury to Oxford to make some terrific discoveries in support of the Popish Plot, and it was thought a masterly stroke on the part of the King to shut him up in the Tower, and to order the Attorney-General to proceed against him for high treason in the Court of King's Bench. But Shaftesbury ingeniously devised a scheme by which he might completely recover his control over his creature. A motion was made and carried in the Commons for impeaching Fitzharris before the Lords for high treason, with a view to supersede the King's prosecution, and enable the exclusionists to turn him to what use they pleased. In the wantonness of triumph the victorious party ordered that Sir Leoline Jenkins, the Secretary of State who had signed the warrants for his committal to the Tower, should carry up the impeachment, and this grave functionary was obliged, however reluctantly, to obey,—that he might escape imprisonment and expulsion. The objection was immediately started in the Lords, that the accused, being a commoner, he could not be tried for his life by them who were not his peers.

Shaftesbury, forgetting Charles I.'s prosecution for high treason before the Lords of the five members of the House of Commons,—which had been so much condemned and which had cost him so dear,—rashly and obstinately contended that the Commons had in all ages justly exercised the right of impeachment against all subjects for all offences;—that impeachment being at the suit of the people what an indictment is at the suit of the King, and the House of Lords being the only Court in which the people can sue, to reject the impeachment would be a denial of justice;—and that although Magna Charta says a man is to be tried by his peers, it adds, "or by the law of the land," referring no

doubt to parliamentary impeachment, which knows no distinction, as far as jurisdiction is concerned, between misdemeanour, felony, and treason. [A. D. 1681.]

On the other side, the Lord Chancellor argued irresistibly, that whatever instances there might be to the contrary in times of confusion and violence, a commoner was as little liable to be tried for his life by the House of Peers as a Peer by a petty jury, and he produced from the rolls of parliament (what had great weight) an "accord" made before Edward III. in full parliament, stating "that the judgment for high treason given by the Lords against the murderers of Edward II. should never be drawn into a precedent whereby they might be called upon to judge any others than Peers." The House resolved that Fitzharris should be proceeded with according to the course of the common law, and not by way of impeachment.

Shaftesbury could only get nineteen other Peers to join him in opposing this resolution in the Lords, but the Commons in a flame immediately voted for him almost unanimously, "that it amounted to a denial of justice, a violation of the constitution of parliament, and an obstruction to the further discovery of the Popish Plot; and that if any inferior court should proceed to the trial of Fitzharris, it would be guilty of a high breach of the privileges of the House of Commons."*

It so happened that these resolutions were passed on Saturday the

* Mr. Hallam, a high authority on all constitutional questions, has condemned this resolution of the Lords, contending that a commoner may be lawfully impeached before the Lords for a capital offence (*Const. Hist.* ii. 603); but I adhere to the opinion of those great lawyers, Hale (*Jurisdiction of House of Lords*, c. xiv.) and Blackstone (*Com.* iv. c. 19), who lay down the contrary doctrine in the most explicit terms. 1. The provision of Magna Charta, "nec super eum ibimus nisi per legale judicium parium suorum," which is a statutory declaration of the common law, I think embraces every mode of prosecution. 2. De Beresford's case (4 Ed. 3), in which the Lords with one voice said that he was not their peer, and that they were not bound to judge him as a Peer of the land, is conclusive to show the state of the law at that time, even if the proviso were not an act of parliament, which being "in full parliament," it seems to be. 3. Parliamentary impeachments were of more recent origin, and could not justly deprive English commoners of their birthright. 4. The instances of impeachments of commoners for high treason are very irregular, and more resemble acts of attainder than judicial proceedings. 5. The waiver of the objection in such instances amounts to little. The five members prosecuted for high treason by the Attorney-General before the Lords, allowed to be improperly prosecuted, did not plead to the jurisdiction more than Scroggs when impeached by the Commons. 6. The liability of a commoner to be impeached for a *misdemeanour* does not break in upon the rule,—which has always been confined to capital cases. Thus for a misdemeanour, a Peer may be tried before a jury, as a commoner may before the Peers. 7. The resolution of the House of Lords to proceed against Sir Adam Blair and others, in 1690, after the opinion of the Judges that the record of 4 Ed. 3 was a statute, is entitled to no weight, as there never was any intention to do more than to frighten the defendants for publishing a libel; and the understanding in the profession ever since has been that a commoner cannot be tried for his life by the House of Lords. For a century and a half there has been no such proceeding, and although Lord Nottingham's position is said to be "dangerous and unfounded," such a proceeding we may venture to say will never again be attempted.—See *St. Tr.* viii. 223, xii. 1207. *Hat. Prec.* iv. 50. *Pamphlet* by Sir W. Jones, 1681.

[A.D. 1681.] 26th of March, the same day that there was a vote in favour of the Exclusion Bill. Charles thereupon formed his determination forthwith to dissolve the parliament, but he kept it a profound secret till the very moment it was to be executed. The Commons having complained of the inconvenience of the Convocation house where they met, the public theatre was fitted up for them, and during this day the King repeatedly came to the spot, and himself gave directions as to the most convenient manner of carrying on the works. During the Sunday he made "the wonderful accommodation he was providing for his faithful Commons" the frequent subject of his discourse,—and every thing indicated a protracted session. On the Monday morning the King came to the House of Lords, as he was wont, in a sedan chair, the crown being secretly carried between his feet. Another chair followed with the curtains drawn, supposed to contain the Lord in waiting. The lid being raised, it was found stuffed with the King's robes. But here a formidable difficulty arose, for they were found to be by mistake the robes of the order of the Garter. So the chair was sent back again for the parliamentary robes, and a member of the House of Lords, who wished to escape from the room to tell what he had seen, was locked up till the chair returned. The King having instantly thrown the proper robes over him, and taken his seat on the throne in the House of Lords, the Black Rod was sent for the Commons, and found them listening in a very careless manner to some tedious remarks of Sir William Jones, an old lawyer, on the Lord Chancellor's [A.D. 1681.] "Accord, temp. Ed. III." Going up to the bar of the House of Lords, there they saw the King with the crown on his head, and heard him say, "My Lords and Gentlemen,—all the world may see we are not like to have a good end when the divisions at the beginning are such. Therefore, my Lord Chancellor, do as I have commanded you." *Lord Chancellor.*—"My Lords and Gentlemen, his Majesty has commanded me to say that it is his Majesty's royal will and pleasure that this parliament be dissolved, and this parliament is accordingly dissolved."*

Charles instantly stepped into his carriage and set off at full speed for Windsor. Shaftesbury, when he had recovered his breath, talked of sitting for the despatch of business in spite of the dissolution, called on his friends not to separate, and sent several messengers to the Commons, entreating them to wait as the Lords were still sitting. But the members of the popular party in both Houses gradually withdrew; Shaftesbury, almost deserted, went out into the streets, where he saw a general dispersion; in a few hours he found Oxford in its state of wonted torpidity, and, by way of relief to his troubled thoughts, he himself hurried off for London.†

* 4 Parl. Hist. 1339. Examen, 104.

† He had been lodged in Baliol College, to which he presented a magnificent piece of plate as a mark of his gratitude.—*Rawleigh Redivivus*, Part II. 101.

CHAPTER XC.

CONCLUSION OF THE LIFE OF LORD SHAFTESBURY.

For some time after his arrival in London, Shaftesbury flattered himself that the dissolution of the parliament at Oxford, like former violent dissolutions, would aggravate the [April, 1681.] public discontent; but the victory of his opponents was complete, and Charles was enabled from henceforth for the rest of his reign to rule by prerogative,—to carry into execution all his plans,—and, though the victim he most panted for escaped him, to execute a bloody revenge upon others who had incurred his resentment.

There remained a most formidable popular party, and it was fortunate for the King that neither pecuniary difficulties nor the state of public affairs imposed upon him such a necessity for calling a parliament as, forty years before, had been felt by his father on the Scottish invasion; but there can be no doubt that there was now a considerable reaction in his favour, which arose partly from the general fickleness of the public mind, partly from Shaftesbury's dangerous character and designs being more clearly developed, partly from the proffered concessions to guard against a Popish succession; but, above all, from the discredit into which the Popish Plot had fallen, and the desire of mankind to blame others for their own credulity and folly.

Shaftesbury entrenched himself in the city of London, but saw that he would soon be assailed there. The government began the celebration of their triumph with the conviction and execution of Fitzharris, in spite of the resolution of the House of Commons, that, after their impeachment of him, his trial by the course of the common law would be a high breach of their privileges.* Still more alarming was the fate of College, "the Protestant Joiner," who, after a bill of indictment against him had been thrown out by a Middlesex grand jury, was carried down into Oxfordshire, under pretence [A.D. 1681.] that he had been guilty of an overt act of treason in that county, by going armed to the parliament,—and was there found guilty and put to death,—although nothing was satisfactorily proved against him, except that he was a turbulent demagogue, who had gained great distinction by bawling out "No Popery!"†

But the eyes of England and of all Europe were turned to the fate of the man who had so long held a divided sway with his Sovereign, and by whose destruction it was hoped that all further opposition to the plans of the Court would for ever cease. Early in the morning of the 2d of July, 1681, under a warrant from the Secretary of State, the Earl of Shaftesbury was apprehended at Thanet House, in Aldersgate Street, on

* 8 St. Tr. 243.

† Ibid., 559.

a charge of high treason, his papers were seized, and he was carried, under a military escort, to be examined before the Council at Whitehall. Arriving there, he found the Council assembled, and the King had the bad taste to be present, having come from Windsor that morning for the pleasure of seeing his old friend and arch enemy in custody on a capital charge.

Certain depositions were read against him made by Irish witnesses, who were to have been examined against the Duke of York and the Queen, and who, accusing Shaftesbury of having suborned them, swore that he had entered into a conspiracy with them, in case he should be worsted in the parliament at Oxford, to carry his measures by an open insurrection, and that he had used many violent and threatening expressions against the King. The prisoner treated this charge with the utmost scorn, desiring to be confronted with the witnesses; and observing that, if he really could treat of such matters with such persons, he was fitter for Bedlam than the Tower. Among his papers was found the draft of an association rather of a dangerous nature; but it was not in his handwriting, and there was nothing to show that he had ever perused it. Upon such evidence he could not be fairly convicted; but, [A.D. 1681.] in the hope of the case being strengthened, or of a partial tribunal, he was committed to take his trial. In James's Memoirs* it is said, that his boldness forsook him when the warrant for his commitment was signed, and that the very rabble hooted him on his way to the Tower. Martyn asserts, with much more probability, that he remained undaunted; that, as he was conducted to prison, he was saluted by vast multitudes with wishes and prayers for his prosperity; and that one among the rest having cried out, "God bless your Lordship! and deliver you from your enemies," he replied, with a smile, "I thank you, sir, but I have nothing to fear: they have much, therefore pray God to deliver them from me." A few days after, one of the Popish Lords whom he had been instrumental in sending to the Tower, affecting great surprise to find him among them, he coolly answered, "that he had been lately indisposed with an ague, and was come to take some *Jesuits' powder*."†

It seems certain, however, that, while in the Tower, he offered to expatriate himself, and to spend the remainder of his days in Carolina, a colony which he had assisted to settle, and where he had property,‡ but the King declared "*he should be tried by his Peers.*"

The difficulty of the government was to get a bill of indictment found against him by a grand jury. Parliament not sitting, and there being a determination that a parliament should never sit again, this was the only mode of commencing the prosecution. But the first step being gained, all the rest of the process would have been most easy; for the

* Vol. i. 713.

† Life, by Martyn, ii. 288. Life and Death of Earl of Shaftesbury, published immediately after his death.—*Harl. Misc.*

‡ The aristocratic constitution for this colony was drawn up at his request by Mr. Locke.—*Locke's Works*, x. 175.

indictment being removed before the Court of the Lord High Steward, consisting of Peers selected by the King,—his subsequent trial would have been mere matter of form,—as much as after sentence the warrant to behead him.

All regard to truth and justice being set aside, the clever course would have been for the witnesses to have sworn to an overt act of treason in some county where there was a manageable jury; but they had not been properly drilled upon this point, and they represented all the treasonable consults to have taken place [A. D. 1681.] in Thanet House, in the city of London. By a London grand jury alone, therefore, could the bill of indictment be found: and London was still in the power of the old liberal corporation. The grand jury was to be summoned by the Sheriffs, and the Sheriffs were Whigs. There were old Bailey Sessions held on the 7th of July, at which regularly the indictment ought to have been preferred; but the Attorney-General waited in the hope of better Sheriffs. Shute and Pilkington, the next couple, were "Whigs and something more."

The trial being delayed, Shaftesbury repeatedly applied by counsel at the Old Bailey and Hicks's Hall, that, according to his own Habeas Corpus Act, he might be bailed; but on the suggestion that the Tower was not under the jurisdiction of the Court, and other frivolous excuses, the application, to which he was clearly entitled, was refused. He prepared an indictment against the Justice who had taken the depositions on which he was committed, and against several of the witnesses for a conspiracy to convict him by perjury; but Pemberton, and the other Judges who wished to please the King, would not suffer the indictment to be submitted to a grand jury.

In the mean time every exertion was made to poison the public mind, and to prejudice against the accused those who were to decide upon his fate. Innumerable pamphlets issued from the press, denouncing him as "the great agitator, without whose baleful presence all resistance to sound principles in church and state would be at an end." The pulpits rang with the dangers to true religion from the non-conformists, and he was reviled by name as "the Apostle of Schism." The Catholics very excusably joined loudly in the cry against him, and called him "the Man of Sin." Political vituperators branded him as "Mephistophiles," "the Fiend," and "Alderman *Shiftsbury*." For the purpose of lowering his reputation, a story was revived of his having boasted that he might have been King of Poland when John Sobieski was elected; and a whimsical Narrative was published, giving an account of his election, under the name of "Count *Tapsky*," which in one sense applied to an operation performed on his side, in consequence of the abscess formed there from his wound, and [A. D. 1681.] in another to his towering genius, leading him to penetrate the firmament and to touch the stars. But the grand engine which the Court hoped would turn the full flood of public indignation against him was the poetry of Dryden. On the 17th of November, 1681, exactly one week before the bill of indictment was to be prepared against him at

the Old Bailey, came out "ABSALOM AND ACHITOPHEL,"* the most lively, the most entertaining, the most poetical, the most captivating personal satire ever written. It had the greatest sale of any publication issuing from the press in England down to the end of the reign of Queen Anne, except the Sermon for which Dr. Sacheverell was impeached.† In a few months it had gone through seven large editions, and in a few hours the character of Achitophel was in the mouth of every one. Shadwell and Settle published answers, but of very inferior merit. High hopes were expressed that the witnesses would gain credit with the grand jury against a man so degraded; but such reasoners knew little of faction; for the more Shaftesbury was assailed, the more resolutely did his admirers adhere to him, and they now regarded him with respect, affection, and tenderness, as a martyr in their cause.

The 24th of November was the critical day, and when it dawned there seemed a strong probability to many that the STATE TRIALS would be ornamented with "an account of the conviction of Anthony Earl of Shaftesbury for high treason, and of his gallant behaviour on the scaffold." The two Chief Justices, Pemberton and North, presided at the Old Bailey, both devoted tools of the government. The former [A.D. 1681.] charged the Grand Jury, and, instead of telling them "that though the proceeding was *ex parte*, and not conclusive, a case must be made out against the prisoner, which, if not answered, would be sufficient to convict him of high treason," said, "That which is referred to you is, to consider whether, upon the evidence given to you, there be any reason or ground for the King to call this person to an account. You are not to judge the person; for the honour of the King and the decency of the matter it is not thought fit by the law that persons should be accused and indicted where there is no colour or ground for it: where there is no kind of suspicion of a crime, nor reason to believe that the thing can be proved, it is not for the King's honour to call men to an account; therefore, you are to inquire whether what you hear be any cause or reason for the King to put the party to answer it." The cunning Judge knew well that "BILLA VERA" would have been Shaftesbury's death-warrant.

The Attorney-General made the extraordinary application that the witnesses for the Crown might be examined in open Court—so that the Grand Jury might be overawed by the authority of the Judges.

* Although Dryden has the merit of the ingenious parallel between Jewish and English history, he was not the first to fix this name on Shaftesbury. On the 9th of July, 1681, exactly a week after his arrest,—came out a doggerel poem against him, entitled, "The Badger in the Fox-trap," containing these lines:—

"Besides my titles are as numerous,
As all my actions various, still, and humorous;
Some call me Tory, some ACHITOPHEL,
Some Jack-a-Dandy, some old Machiavel;
Some call me devil, some his foster-brother,
And turn-coat, rebel, all the nation over."

† On the authority of Dr. Johnson's father, who was a bookseller.—See *Life of Dryden*, in the "Lives of the Poets."

The foreman suggested, that it had been the constant rule from all time for Grand Juries to examine the witnesses privately in their own chamber; and, to show the secrecy of this preliminary inquiry, he quoted the words of the Grand Juror's oath,—"the King's counsel, your fellows', and your own, you shall keep secret,"—which could not apply to a proceeding before all the world. But C. J. North ruled that the King might dispense with this secrecy, and that the application could not be refused.

The indictment was upon the 25th of Edward III., for "compassing and imagining the death of the King,"—and the overt acts were designing to raise an insurrection at Oxford,—asserting "that the King was a man of no faith, and deserved to be deposed like Richard II.," and declaring "that he, the Earl of Shaftesbury, would make England into a Commonwealth, like Holland." Notwithstanding all the pains that had been taken for four months, the case was not stronger than at the time of the commitment; and the witnesses telling a most improbable story, contradicted each other and themselves, although the judges interposed from time to time with friendly questions, and tried to keep them in countenance. [A.D. 1681.]

The evidence being closed, Pemberton said—"You are to inquire whether it be fitting for the King to call my Lord Shaftesbury to question upon this account of treasonable words." *North*, C. J.—"Gentlemen, I hope you will consider your oaths, and give all things their due weight."

The Grand Jury were then allowed to retire, carrying the indictment along with them. They soon returned, and quietly handed it to the Court. Never before or since, on the decision of a Grand Jury, did so much depend, or was there so much breathless anxiety. When the officer, looking on the back of the indictment, read aloud the word "IGNORAMUS," a shout arose which lasted above an hour; and, before it concluded, there were bonfires and illuminations in every street in the metropolis.

The messenger who carried the news of the *Ignoramus* to the Tower found Shaftesbury playing a game at piquet with his Countess,—which he calmly continued,—the cards having been probably provided by design for the occasion, like Richard's prayer-book at Crosby House when he expected the offer of the Crown. King Charles being told the cause of the rejoicings, he said, without any art, "It is a hard case that I am the last man to have law and justice in the whole nation."*

The event was celebrated by a MEDAL, bearing the bust of Shaftesbury, and the inscription, "ANTONIO COMITI DE SHAFTESBURY;" on the reverse, the sun bursting through a cloud over the city and Tower of London, with the date, 24th November, 1681, and the motto "LÆTAMUR."

This gave rise to Dryden's famous poem of "THE MEDAL," said to have been suggested by the King himself, who, walking with him one

* 8 St. Tr. 759.

day soon after in the Mall said, "If I were a poet (and I think I am poor enough to be one), I would write a poem on Lord Shaftesbury's escape from justice in the following manner," and then gave him the plan of it. Dryden took the hint, carried the poem, as soon as it was [A.D. 1682.] written, to the King, and had a present of a hundred broad pieces for it. It was published in March, 1682. The satire is, if possible, more cutting than any thing in "Absalom and Achitophel." This is the description of his ministerial career:

"Behold him now exalted into trust,
His counsels oft convenient, never just;
E'en in the most sincere advice he gave,
He had a grudging still to be a knave:
At least as little honest as he could,
And, like white witches, mischievously good.
To his first bias longingly he leans,
And rather would be great by wicked means."

Such a withering prophecy as the following was enough to bring on the decrepitude it portrays:

"If true succession from our isle should fail,
And crowds profane with impious arts prevail,
Not thou, nor those thy factious arms engage,
Shall reap that harvest of rebellious rage,
With which thou flatterest thy decrepit age."

But the poem brought the actual "*Medal*" into greater vogue, and the whole Whig party wore it depending by a riband from their button-hole, to show their numbers and their spirit.

Charles was so delighted with the manner in which Dryden avenged him upon Shaftesbury, that he pressed for a second part of Absalom and Achitophel. This task the great poet turned over to Nahum Tate, contributing the 200 admirable lines beginning—

"Next these a troop of busy spirits press,
Of little fortunes, and of conscience less;
Shall that false Hebronite escape our curse,
Judas that keeps the rebels' pension purse,
Judas that pays the treason writer's fee,
Judas who well deserves his namesake's tree?"

This poem did not appear till November, 1682, and had small success, but was little wanted; for by this time the King had got a Lord Mayor and Sheriffs of his own in the city, while Shaftesbury, rapidly declining in reputation and in influence, had ceased to be for- [FEB. 15, 1682.] midable to his enemies, and, from the extravagant notions which had taken possession of his diseased mind, was looked upon by his friends with compassion, distrust, and alarm.

Immediately after the indictment had been *ignored*, the noble prisoner moved for his discharge; but he was illegally detained in custody in the Tower till the end of the following Hilary Term. He then resumed his residence in Thanet House, taking special care not to go beyond the limits of the city of London and county of Middlesex.

He instituted a prosecution against the principal witnesses who had conspired maliciously to prosecute him for high treason. The indictment being found at the Old Bailey, it was removed by *certiorari* into the Court of King's Bench, and the Judges granted a rule to show cause why it should not be tried in another county. He showed cause in person, and offered to try it in Middlesex. The Court insisted on a more distant county. He declared that he abandoned the prosecution, as in every other county, since the dissolution of the Oxford Parliament, passive-obedience sheriffs and magistrates had been appointed, to the exclusion of all fair men, and no justice could be obtained.

In the course of a few months he had the mortification to find, that London and Middlesex were as much enslaved and as unsafe as any part of the kingdom.* By recurring to an obsolete custom of appointing one Sheriff in the City by the Lord Mayor drinking his health, and by the expedient of holding an illegal poll, Sir Dudley North and Rich, the passive-obedience candidates, got possession of the office of Sheriff of London and Middlesex, instead of Papillon and Dubois, liberals, who were duly elected, and though, at the election of Lord Mayor, Gould, the liberal candidate, had a large majority of lawful votes,—by a partial scrutiny Pritchard, his passive-resistance competitor, was placed in the civic chair.

Now were vigorously prosecuted the proceedings in the Court of King's Bench for disfranchising the city of London, and other municipal corporations,—and the plan of destroying all free institutions in England, and establishing arbitrary rule, was openly avowed, and very generally encouraged. [May, 1682.]

Shaftesbury in despair for the State, and knowing that he was himself still marked out for vengeance, began to contemplate a most criminal enterprise. There had as yet been no misrule but what might be corrected by constitutional means and by the returning good sense of the public; and at any rate, the strength of the government was so great that resistance could only involve those who attempted it in ruin, and defer the hope of redress. Yet Shaftesbury was for an immediate insurrection,—professing that he would respect the monarchy and the person of the King, but that he would forcibly set aside the Duke of York as successor to the crown and get rid of evil councillors. He flattered himself that he had the City at his command, and that his "brisk boys" suddenly rising and putting him in possession of this citadel, the rest of the kingdom would by a general effort throw off the galling yoke now imposed upon it. He solicited Lord Russell, Sydney, and the other Whig leaders to join him. They had various conferences with him, in which they agreed in reprobating the arbitrary policy of government, and even deliberated with him on the necessity and the possibility of saving the constitution by force; but they positively refused

* The unlearned reader should be informed, that the office of Sheriff of Middlesex, by a very ancient grant, belongs to the city of London, and is exercised by the two individuals who are elected Sheriffs of London, and who thus have the power of returning juries for the county as well as for the city.

to join in an instant rising, and by way of tranquilizing him, strongly pressed for delay, till his plans should be better matured, and the times should be more propitious. Even the rash Monmouth cautioned him to be more prudent. It is said, that his mind was now greatly enfeebled by bodily suffering, and that his temper, formerly cheerful, equal, and bland, had become morose, irritable, and gloomy. At times, his former gaiety of heart broke forth. He declared to his friends, "That he would lead the army himself;" and jesting on his infirmities he said, "They must be convinced he could not run away, and they should see he knew better how to die fighting for their liberties than on a scaffold,—the only alternative that remained for him." They were in hourly apprehension of his engaging in some mad enterprise which would involve the whole party in destruction.

Having information, in the beginning of November, that there was [A. D. 1682.] an intention to arrest him, he settled his estate so that it should, in any event, be secure to his family; and, leaving Thanet House, he lay concealed among his intimates in different parts of the city, always shifting his quarters and putting on different disguises. At last being told by his friend Lord Mordaunt of a suspicious conference in the apartments of the Duchess of Portsmouth, of which he was supposed to be the subject, he said, "My Lord, you are a young man of honour, and would not deceive me: if this has happened, I must be gone to-night." Accordingly he immediately left the house in which he was concealed, and in a few hours it was searched by the King's messengers.

The following night, having tenderly taken leave of his Countess and his friends, he quitted London, and, dressed in the habit of a Presbyterian minister, he travelled to Harwich, that he might embark from thence for the Continent. There he was detained eight or ten days by contrary winds. During this time he remained at an obscure inn with a handsome young friend of the name of Wheelock, who was likewise disguised under a black peruque, and passed as his nephew. It so happened, that one day the maid of the house came suddenly into the room of this youth, and, to her surprise and admiration, saw him with a fine light head of hair. She instantly told her mistress, who acquainted the Presbyterian minister and his nephew of the maid's discovery. "As to herself," she said, "she did not know, nor desire to know, who they were, and that they might depend upon her silence, but she could not be sure of the maid's, and therefore advised them to leave the house and town directly." Shaftesbury, thanking her for her information, declared that "he should have no apprehension from one who had such a sense of honour. As for the maid," said he, turning with a pleasant air to Wheelock, "you must go and make love to her, and this will secure her secrecy."

One of his servants, whom he dressed up in a similar diguise to his [Nov. 18, 1682.] own, was stopped and taken into custody,—which facilitated the master's escape. Changing his habiliments, he got off in an open boat, and, after a tempestuous and perilous voyage, arrived at Amsterdam.

He was afraid of being reclaimed by the English government, and sent over as a criminal, of which there had been several instances during these revolutionary times. But, acting with his usual assurance, and confiding in the forgiveness of political injuries when circumstances are changed, he immediately petitioned to be admitted into the magistracy,—and his prayer was complied with by the Capital of the United Provinces in the following form :—" Carthago, non adhuc deleta, Comitem de Shaftesbury in gremio suo recipere vult."* [Dec. 1682.]

He took a large house, in which he was beginning to live very elegantly, out of compliment to his adopted country. The principal men of the city waited upon him, saying, he had at present no enemies but such as were theirs, and the municipality of Amsterdam ornamented their public hall with a portrait of their new fellow-citizen.

In the midst of the fêtes he was giving and receiving as a Dutchman, he was seized with a violent fit of his old distemper, the gout. It seemed to yield to the prescribed remedies, and he thought he should soon recover,—when it suddenly flew to his stomach, and proved fatal. He expired in the arms of his faithful companion, Wheelock, on the 21st of January, 1683, in the 62d year of his age.

Their High Mightinesses, the Lords of the States, showed all respect for his memory by putting themselves into mourning, and ordering that his corpse and effects should be exempt from all toll, fees, and customs, in every place they should be carried through in order to their passage to England. A vessel hung with black, and adorned with streamers, and scutcheons, conveyed the body to Poole in Dorsetshire ; and on its arrival there the principal gentlemen of the county, forgetting past animosities, and for the time recollecting only what was praiseworthy in their distinguished countryman, attended his funeral to Wimborne St. Giles, where he was honourably interred.

In the year 1732, the fourth Earl erected in the church there a splendid monument to him, with an inscription, which, after his genealogy and his offices, thus records his services to the King, the country, liberty, and Protestantism :—

" Et principi et populo fidus, per varias rerum vicissitudines
Saluti publicæ invigilavit; Regnum Anarchiâ penitus obrutum
Restituit, stabilivit. Cùm vero despotici imperii fautores,
Servum pecus, et Roma, scelerum artifex, patriæ intentarent ruinam,
Civilis et Ecclesiasticæ libertatis Assertor extitit

* Bibliothèque Choisie, vi. 367. " C'est un honneur," says Le Clerc, " pour la ville d'Amsterdam d'avoir reçu et d'avoir protégé un si illustre refugié, sans avoir égard aux sinistres impressions qu'on avoit volu donner de lui, à cause d'un discours qu'il avoit prononcé comme Chancellier dans le parlement 1672. Les descendans de ce Seigneur, en conservent une mémoire pleine de reconnoissance, comme M. le Comte, son petit fils, me l'a témoigné plus d'une fois." From the view I have felt myself obliged to take of some parts of Lord Shaftesbury's character and conduct, I have not felt myself at liberty to ask for access to the family archives, but there seems no reason to suppose that they would afford any contradiction to these statements.

Indefessus, Conservator strenuus. Humanitate, in patriam amore,
Ingenii acumine, probitate, facundiâ, fortitudine fide,
Cæterisque eximiis animi dotibus, nullum habuit superiorem.
Vitæ, publicis commodis impensæ, memoriam et laudes,
Stante libertate, nunquam abolebit Tempus edax, nec edacior Invidia."

But the impartial historian cannot concur in this eulogy. We readily allow that Shaftesbury not only had splendid talents and an energy of mind almost unparalleled, but that he had very valuable qualities calculated to secure attachment and respect both in private and in public life. He was a high-bred gentleman, and strictly observed all the conventional rules of honour. In an age of great pecuniary corruption he never took bribes from individuals at home or from foreign governments. Although frequently changing his party, he had the address to gain the confidence of his new associates without incurring the personal ill-will of those whom he left. The satire of Hudibras is unjust upon his betraying the different administrations to which he had belonged:

"Was for them and against them all,
But barbarous when they came to fall;
For by trepanning th' old to ruin,
He made his interest with the new one."

Yet the attempts of his apologists to show that he was through life the consistent friend of liberty and toleration, with the exception of being carried rather too far by his zeal for the reformed faith, rest upon a total perversion of facts and a confusion of the distinctions between right and wrong. He began by supporting the worst abuses of the reign of Charles I. which had prevailed under his father-in-law, Lord Keeper Coventry; and when he went over to the parliament he was distinguished by his democratic fervour and his antipathy to the royal family. He then eagerly joined those who were for restoring Charles II. without condition or any security for the constitution; and as long as he shared in exercising the power of the prerogative, he eagerly assisted in extending it, and would have been pleased to see the King of England as absolute as the King of France. His love for the natural rights of mankind and for the Protestant religion he testified by his exclamation, "Delenda est Carthago," and his accession to Clifford's treaty, by which Popery was to be established in England. Although he did not himself take bribes, he knew that the King and his colleagues were the pensioners of Louis, and he countenanced a policy by which England would have been degraded into a province of that kingdom which she has conquered, and of which she ought ever at least to be the rival and the equal.

I must likewise enumerate among his faults his grasping the office of Chancellor, for which, if he was a man of sense, he must have known that he was wholly incompetent. To gratify his ambition, or vanity, or caprice, he turned a court of justice into a lottery office,—sporting with the property and the dearest interests of his fellow-subjects.

When he went over to the popular side, he was of great service in opposing unconstitutional measures, such as "the Test for establishing

passive obedience." His "Exclusion Bill" was a glorious effort, and he did accomplish the grand safeguard for personal liberty,—for which we must be for ever grateful to him. But for his own crooked purposes, he inflamed religious animosity to a pitch of fury wholly unexampled in England, he patronised the monstrous fictions and murders of the Popish Plot, and he passed the Catholic Disqualification Bill, the bitter fruits of which our children will taste. When by the extreme violence of his machinations he had alarmed the friends of constitutional government, and given an ascendency to the arbitrary principles adopted by the Court, he planned an insurrection, which, if attempted according to his eager wishes, could only have terminated in the utter ruin of the liberal party, and the permanent establishment of despotism. The final result of all his excesses and vagaries was, that he lost influence with all parties, and that his death in exile caused little grief to his friends or exultation to his enemies.

His great passion was for intense political excitement; and he was never so happy as in the crisis of some bold enterprise in which he hazarded his own safety and that of the state.*

From the specimens of his oratory which have come down to us, he appears to have been the first man in this country, whom we can designate a great parliamentary debater. Compare his dexterous appeals to party feeling, his cutting personalities, and his epigrammatic turns, to the eternal divisions and subdivisions of Pym, or the mixed pedantry and cant of the other leaders on either side in the Long Parliament. Halifax, formed on his model, if more refined, was less impressive, and till the elder Pitt arose, he probably was not excelled for eloquence in the English senate.

As to his literary merits, he was infinitely inferior to Bolingbroke; and I must agree with Horace Walpole, "that he was rather a copious writer for faction than an author, and that he wrote nothing which he could wish to be remembered." As the occasion required he threw off a pamphlet containing some burning words, but reckless as to facts, sentiments, and even style.

We have deeply to regret the loss of his autobiography, which he intrusted to Mr. Locke, and which was burnt in the panic occasioned by the execution of Algernon Sydney for having in his possession a speculative treatise upon government. The philosopher has by no means made atonement for his timidity by his "Memoirs relating to the Life of Anthony, first Earl of Shaftesbury,"—an extremely jejune and perfunctory performance. Indeed it is difficult to conceive how any one of common intelligence, who had been long in habits of familiar intercourse with such an eminent and interesting personage, should have

* The most candid estimate of his character is to be found in Mr. Fox's letter to Serjeant Heywood: "I am quite glad I have little to do with Shaftesbury; for as to making him a real patriot or friend to our ideas of liberty, it is impossible, at least in my opinion. On the other hand, he is very far from being the devil he is described. Indeed he seems to have been strictly a man of honour, if that praise can be given to one destitute of *public* virtue, and who did not consider Catholics as fellow-creatures: a feeling very common in those times."

professed to give any account of him without communicating more to instruct or amuse the reader.*

Shaftesbury seems to have been a most delightful companion, and the following anecdote is handed down to us to show his tact in society. While yet a young man, he was invited to dine with Sir John Denham, an aged widower (as was supposed), at Chelsea, who, when the guests had assembled, said to them that he had made choice of the company on account of their known abilities and particular friendship to him, for their advice in a matter of the greatest moment to him. He had been, he said, a widower for many years, and began to want somebody that might ease him of the trouble of housekeeping, and take some care of him under the growing infirmities of old age; and to that purpose had pitched upon a woman well known to him by the experience of many years, in fine, his housekeeper. A gentleman present, to dissuade him from this step, out of regard to his grown-up children, was beginning a very unflattering description of the object of his choice, when Shaftesbury begged permission to interrupt the debate by a question to their host,—"whether he was not already married to her?" Sir John, after a little demur, answered, "Yes, truly, I was married to her yesterday." "Well, then," exclaimed Sir Anthony Ashley Cooper, "there is no more need of our advice; pray let us have the honour to see my lady, and wish her joy, and so to dinner." He afterwards said privately, in returning home, to the gentleman whose speech he had cut short, "the man and the manner gave me a suspicion that having done a foolish thing, he was desirous to cover himself with the authority of our advice. I thought it good to be sure before you went any farther, and you see what came of it."† Another instance of his sagacity was his discovery of Miss Hyde's marriage to the Duke of York, long before it was made public, from the deference with which she was treated by her mother.‡

He lived in great splendour, and entertained the King sumptuously at Wimborne St. Giles. Like his principles, he changed his style of cookery. In 1669, when there was a coolness with the French court, he received a visit from Cosmo de Medici, Duke of Tuscany. Regulating his table entirely in the English manner, he declared that "he was neither an admirer of the French taste nor friend to French interests, while some with the servile maxims of that country had imbibed its luxury. Others might treat him like a Frenchman; his desire was to entertain him like an Englishman." The Prince politely answered, "It was the greatest compliment he could make him; and on his re-

* Doubts have been entertained whether this sketch be by Locke; but I cannot doubt the fact, although there is a copy of it among Locke's papers in the possession of Lord Lovelace not in Locke's handwriting.—A Life of Shaftesbury is still much wanted. That in the "Biographia Britannica" is a mere panegyric, and that by Martyn, the author of the tragedy of "Timoleon," proceeds upon the supposition that his hero's only and uniform object was to oppose the Popish faction at Court. Many valuable additions and corrections to it have been made by the editor, Mr. Cooke, to whom we are indebted for the able "History of Parties."

† Locke, ix. 273.

‡ Ante, p. 174.

turn to Italy sent him every year presents of wine as a testimony of his regard.*

Complying fully with the Court fashion, he seems to have aimed at distinction in licentiousness as much as in any other pursuit. Even when he was Lord Chanceller, he sought to rival the King by the variety and notoriety of his amours. This is quaintly intimated to us by Roger North. "Whether out of inclination, custom, or policy, I will not determine, it is certain he was not behindhand with the Court in the modish pleasures of the time. There was a deformed old gentleman called Sir P. Neal, who, they say, sat for the picture of Sydrophel in Hudibras, and about town was called *the Lord Shaftesbury's groom*, because he watered his mares in Hyde Park with Rhenish wine and sugar, and not seldom a bait of cheesecakes."†

Otway most indecently brought his vices on the stage in the character of ANTONIO in VENICE PRESERVED,‡ which, that it might not be mistaken, was thus boastfully announced in the prologue :—

> "Next is a senator that keeps ———,
> In Venice none a higher office bore;
> To lewdness every night the lecher ran,
> Show me all London such another man."

But though eager for reputation as a man of gallantry, he modestly yielded the palm to his master. Charles having said to him one day, "Shaftesbury, you are the most profligate man in my dominions," he coolly replied, "Of a subject, sir, I believe I am."

Yet he was not altogether negligent of domestic duties. He was thrice married, and behaved to his wives with courtesy. The first, as we have related, was the daughter of Lord Keeper Coventry. By her he had no issue. Nor had he any by his third wife, who survived him,—a daughter of William Lord Spencer of Wormlington. But by his second wife, the daughter of the Earl of Exeter, he had a son, Anthony, who was not at all remarkable for genius, but who was the father of the third Earl, the pupil of Locke, and the author of "The Characteristics." In the education of this grandson, amidst all his distractions, he took the most unceasing and tender interest.

Shaftesbury, in his person, was short and slender, but well made, and when young, strong and active, but from the life he led, he early showed symptoms of premature old age.

> "A fiery soul which working out its way,
> Fretted the pigmy body to decay,
> And o'er-informed the tenement of clay."

* Martyn, i. 383.

† Examen, 60. Sir P. Neal, thus contemptuously mentioned, is said to have been a physician; a friend of Locke's and a fellow of the Royal Society.

‡ It seems utterly impossible to believe that the scenes between Antonio and Aquilina could ever have been publicly performed. To make the matter, if possible, worse, the tragedy of "Venice Preserved" was brought out in February 1681, when Shaftesbury was to be tried for his life,—with a view to render him odious. Dr. Johnson says in his Life of Otway, that this play was not acted till 1685, but he is mistaken. See Malone's Life of Dryden, p. 168.

I wish, for many reasons, that I could have spoken of him more favourably. It is delightful to think that his honours and estates are now enjoyed by descendants who, inheriting a large portion of his talents, are adorned by every public and private virtue.

CHAPTER XCI.

LIFE OF LORD CHANCELLOR NOTTINGHAM FROM HIS BIRTH TILL HE WAS CREATED LORD CHANCELLOR.

We now pass from a Chancellor destitute of all juridical acquirements, to the "Father of Equity." Lord Shaftesbury was succeeded by Lord Nottingham, who fully deserves all the praise that has been bestowed upon him as "a consummate lawyer," although I am afraid we shall not be able to regard him always as "a zealous defender of the constitution."*

Heneage Finch, afterwards Earl of Nottingham, and Lord Chancellor of England, was born at Eastwell, in Kent, on the 23d of December, 1621. He was of the ancient family of the Finches, whose descent from Henry Fitzherbert, Chancellor to Henry I., we have already noticed.† He was the son of Sir Heneage Finch, who was the younger son of Sir Moyle Finch, and consequently he was first-cousin to the Lord Keeper of that name. This Sir Heneage, the father, was Recorder of London, and Speaker of the House of Commons in the second parliament of Charles I., which met in 1626, and he delivered to the King the address for the removal of the Duke of Buckingham. He had been the friend of Lord Bacon, and gallantly stood by that great man when charged with bribery and corruption. He never rose to greater distinction, but he made a large fortune by his profession, and lived splendidly in Kensington Palace, which was sold by his grandson to King William III.

Young Heneage, unlike his kinsman who gained the Great Seal by such evil arts, was ever remarkable for steadiness of conduct and diligent application to study. He was educated at Westminster School, and was thence transferred to Christ Church, Oxford, where he was entered a gentleman commoner in Lent Term, 1635. Here he remained between two and three years, reading very diligently; but on account of the sudden death of his father he withdrew from the University without taking a degree. Left so young his own master with a considerable patrimony, there was great danger of his plunging into dissipation; but he resolved to rise to distinction by the profession of

* 3 Bl. Com. 56.

† See Life of Lord Keeper Finch, *ante*, Vol. II.

the law, as several of his family had already done. He therefore entered himself of the Inner Temple, not merely, like other cavaliers of fortune, to give a fashionable [Nov. 26, 1638.] finish to his education, but with the fixed resolve of mastering the science of the law. The present practice of students at the Inns of Court becoming pupils of special pleaders, conveyancers, and equity draughtsmen, was then unknown, and a knowledge of the law was acquired by hearing lectures called "readings," by the habit of "*case-putting*" at "moots," and by taking notes of arguments in the courts of justice. In the whole of this discipline young Finch was remarkable for his regularity and zeal. He laid to heart a maxim of his uncle, Sir Henry Finch, that "a law student ought to read all the morning and to talk all the afternoon."* He therefore regularly attended the disputations which took place every evening in the Cloister Walks† in the Temple, which seem to have supplied the place of our modern debating clubs, and, being a noted "*put-case*," he acquired great fluency of speech and readiness of reply.

He was likewise a diligent note-taker when cases of importance were argued at Westminster, and these he digested for his own use, there being no "Term Reports" in those days. This useful exercise he continued for some years after he was in practice. In a MS. treatise of his, composed when he was Chancellor, he thus refers to a case decided in Michaelmas Term, 1656:—"*Vide meas notas in diebus illis.*"

He was called to the Bar on the 30th of January, 1645,—although then of little more than six years' standing on the books of the Inner Temple,—the required period of seven years being abridged in his case from favour or from his extraordinary proficiency.‡ About the same time he married the daughter of Mr. William Harvey, merchant of London,—a lady of beauty and merit, with whom he long lived in a state of great connubial happiness.

During the next fifteen years, except in domestic life, we know nothing of him. His name is not mentioned in any public records or private memorials of the time, and we are left to the probable conjecture

* Roger North makes the Earl of Nottingham himself the original author of this saying.—*Life of Lord Guildford*, i. 25.

† These "Walks" were burnt down in the great fire of London in 1666. The benchers of the Middle Temple wished to build chambers on the site—but this plan was stopped by our Finch, then a bencher of the Inner Temple, from a grateful recollection of the benefit of case-putting. Sir Christopher Wren afterwards reconstructed the Cloisters with chambers over them, as they now remain, at the bottom of Inner Temple Lane.

‡ This period has been gradually shortened. When Lord Coke was a student, it was eight years, but from his stupendous acquirements, he was called at the end of six. There were then regular and severe examinations during the studentship, and a man might either have been accelerated or plucked. The period at the Middle Temple and Gray's Inn is now reduced to three years, and at Lincoln's Inn and the Inner Temple to five years—abridging it to three in favour of those who have taken the degree of A. M. at Oxford, Cambridge, or Dublin. At all, the examinations have become merely formal and farcical—the student being stopped in "putting his case" as soon as he has pronounced the words "John Danvers seised in fee—"

that being a keen royalist in his heart, he would not accept of any employment under the Commonwealth, and that not being of a nature very chivalrous or adventurous,—instead of entering into plots against the established government, he calmly and steadily pursued his profession, in the hope that a change of public opinion might bring round better times. The prosecution and flight of his cousin, Lord Keeper Finch, from whose patronage he no doubt expected promotion, must have been a heavy blow to him, but he did not consider himself bound either to rush forward in his defence, or to share his exile.

At last Oliver died, Richard abdicated, Monk marched from the North, and royalist principles might be safely proclaimed. Finch emerged into public life, and was returned for the city of Canterbury to the Convention Parliament. To mark his loyal enthusiasm, he got up "a declaration and vindication of the loyal-hearted nobility, gentry, and others of the county of Kent and city of Canterbury, that they had no hand in the murder of the King,"—wherein it is set forth "that the generality, and as for the number, much the greater, so also for the quality, much the better part of this famous and populous county and city hath, from the alpha to the omega, from the first to the last of these distracted, distempered, and unhappy times, been truly cordial, constant, and steady in the matter of their fidelity and loyalty to their Prince and Sovereign, without the least thought or desire to deviate, apostatize, or turn out of the good old way of due allegiance."

On the King's return, Finch was rewarded with the office of Solicitor-General,—to the disappointment of several cavalier lawyers, who had run more risks and made greater sacrifices in the royal cause; but, considering his deep learning, his solid abilities, his professional eminence, and his fair character, no one could justly blame the appointment. To grace it, he was first knighted, and immediately after made a baronet. Sir Jeffrey Palmer, the Attorney-General, a very able lawyer, having been in the service of Charles I., was now old and infirm; and not being a member of the House of Commons, the great weight of the government business was thrown upon the Solicitor, who got through it very creditably. While the Convention Parliament lasted, he seconded Clarendon's policy, by obstructing all the plans that were brought forward for comprehending the Presbyterians in the establishment, and still giving them hopes of favour.* When the bill of indemnity was passing, he successfully supported the amendment of the Lords, not only to except the King's Judges, but Vane, Haslerig, Lambert, and Axtell,—urging that they could only be pardoned on the saying of David, "Slay them not, lest my people forget it;"† but he was unable to resist the proviso "that Vane and Lambert should not be executed without the farther authority of the two Houses."‡

[JUNE 6, 1660.]

A troublesome motion being made for an address that the King would marry a Protestant, Mr. Solicitor parried it by urging that "they had

* 4 Parl. Hist. 119.
† Ibid. 100, 102, 108.
‡ Ibid. 79, 95, 154.

no reason to think the King would marry a Papist, as he had not done so when living in the courts of Catholic princes. He said, "they should, at all events, first have a convenient Protestant match to propose;" and he denied that the marriage of the King's father to a Papist had been a chief cause of the late troubles.*

Finch strenuously supported a very foolish motion for the impeachment of Mr. Drake, author of a book published to show, what was undoubtedly correct in point of law, "that the Long Parliament had never been legally put an end to," as the Act for that purpose was a mere ordinance of the Commons, without the concurrence of the King or the Lords,—and that "the present parliament was not legally assembled," the writs being issued in the name of "the Keepers of the Liberties of England."†

As a lawyer, I blush for my order while I mention Finch's last appearance in the Convention Parliament. JOHN MILTON, already the author of COMUS and other poems, the most exquisite in the language, —after being long detained in the custody of the Serjeant at Arms, was released by the order of the House—most men, however "cavalierly" inclined, being disposed to forget his political offences. The Serjeant had exacted from his prisoner fees to the amount of 150*l.*,—a sum which, with great difficulty, he had borrowed from his friends. The famous Andrew Marvell brought the matter before the House, and moved that the money should be refunded. He was supported in this motion by Colonel King and Colonel Shapcot, two officers of undoubted loyalty as well as gallantry; but Mr. Solicitor-General Finch strongly opposed it, saying that "this Mr. Milton had been Latin Secretary to Cromwell, and, instead of paying 150*l.*, well deserved hanging."‡ However, the matter was referred to a committee of privileges, who, I hope, decided for the Poet.

The trial of the regicides coming on, they were chiefly conducted by Mr. Solicitor Finch on the part of the Crown; and through the whole of the proceedings he seems to have acted with moderation and firmness. He cannot fairly be made answerable for the objectionable Judges named in the Commission, or for the harshness with which some of the prosecutions against those who had not concurred in the King's death were instituted.

Next year he was chosen "Autumn Reader of the Inner Temple," and he performed his duties with an ability and splendour never surpassed. He took for the subject of his lectures "the Payment and Recovery of the Debts of the Crown," which he treated with great depth of learning and felicity of illustration.—The feasting lasted six days. On the first of these he entertained the nobility and Privy Councillors; on the second, the Lord Mayor, Aldermen, and principal citizens of London; on the third, the whole College of Physicians, who came with caps and gowns; on the fourth, the Long Robe, —Judges, Advocates, Doctors of the civil law, and all the society of [A. D. 1661.]

* 4 Parl. Hist. 120. † 5 St. Tr. 1363. ‡ Ibid. 162.

Doctors' Commons; on the fifth, the Archbishops, Bishops, and other dignitaries of the Church; and on the last, the King, the Duke of York, and all the great officers of the Court. There had not been such a royal visit since Henry VIII. and Queen Catherine honoured a Serjeant's feast kept in Ely House, as commemorated by Stow,—although Henry VII. and preceding sovereigns had often thus shown their respect for the Law and its Professors. On this occasion, we are told that his Majesty came from Whitehall in his state barge, and landing at the Temple stairs, was there received by the READER, and the Chief Justice of the Common Pleas. Passing thence through a double file of the Reader's servants clothed in scarlet cloaks and white doublets, he took his way through a breach made expressly for the occasion in the wall, which at that time enclosed the Temple Garden,—and moved on through a lane formed of Benchers, Utter-barristers, and Students belonging to the society,—till mounting the Terrace, he arrived at the Inner Temple Hall. A band of many wind instruments and twenty violins saluted the Royal ear with lively and soothing airs. After the sumptuous dinner, there was much dancing and merriment, which continued to a late hour. His Majesty entered with a hearty good humour into the frolics of the place; and the Duke of York and Prince Rupert were admitted members of the society.*

In the parliament called in 1661, which sat near eighteen years, Finch represented the University of Oxford, which was proud of him, but not quite satisfied with him, for not procuring a remission of the tax upon hearths, which weighed heavily on the Colleges. While the parliament was held at Oxford in 1665, on account of the plague raging in London, the member for the University greatly distinguished himself in supporting "the Five-mile Act," much valued by his constituents, as it forbad any nonconformist minister to dwell in, or come within, five miles of any market town; and they resolved gratefully to confer upon him the honorary degree of Doctor of Civil Law; "which creation being concluded," says Anthony Wood, "in the presence of several parliament men, the Vice-chancellor stood up and spoke to the public orator to do his office: Whereupon he made a most admirable harangue, and amongst other things to this effect, *that the University wished they had more Colleges to entertain the parliament men and more chambers*, BUT BY NO MEANS MORE CHIMNEYS,—at which Sir Heneage changed his countenance, and drew a little back."

During this short session at Oxford he incurred great obloquy with the landed interest, by opposing the bill to prohibit the importation of Irish cattle and provisions. "He was never known," says Carter, "to exert himself so much; but had an angel spoken, it would have signified nothing.† He could not even prevail on the House to pause or to give a copy of the Bill to Sir William Petty, and the other deputies sent over from Ireland to oppose it,—who were told "that it might be once

* A similar honour was soon after conferred on Lincoln's Inn, where the royal signatures are still to be seen.

† Life of Ormond, ii. 322.

read over to them, and then they must immediately say what they had to offer in objection."*

I do not find any further notice of his parliamentary efforts while he was Solicitor-General, except on the impeachment of Lord Clarendon. It has been falsely said that he then turned against his patron;† but it is quite clear that he manfully stood by him,—admitting "that an impeachment there must be if there be cause, and that such accusations are not to be passed over in silence,"—but arguing with irresistible force that none of the articles amounted to high treason under 25 Ed. III., and scouting the notion that there may be a prosecution for treason in parliament more than in the inferior courts for any offence not declared to be treason by the statute: "How then doth the bringing it into parliament alter the case? If the parliament set aside laws in this case, we should be happy to see a law declaring what is the power of parliament."‡

But in the mean time his reputation for fine speaking at the bar rose so high that he was now often called the "English Cicero" and the "English Roscius." Evelyn styles him "the smooth-tongued solicitor;" and in his Diary, under date October 26th, 1664, he writes, "At the Council I heard Mr. Solicitor Finch plead most eloquently for the merchants trading to the Canaries, praying for a new charter." We have a similar testimony from the simple and trustworthy Pepys respecting the hearing of an appeal at the bar of the House of Lords. "The cause was managed for my Lord Privy Seal by Finch, the Solicitor-General, but I do really think that he is a man of as great eloquence as ever I heard or ever hope to hear in all my life."§

On the trial of Lord Morley for the murder of Mr. Hastings before the Lord High Steward and the Peers, he made a most elaborate speech, laying down with great precision the distinction between murder and manslaughter. Some of his observations on the effect of the prisoner being a Peer are curious; "I do acknowledge to your Lordships (for why should I conceal any thing that makes for my Lord Morley's advantage?) I do confess that an affront or indignity offered to a Peer is much more heinous than that which is offered to a private gentleman. But I must needs say withal, that the law hath provided another manner of reparation for a Peer than that which it gives a gentleman. The same words that being spoken of a gentleman will bear no kind of action, when they are spoken to a Peer become *scandalum magnatum*. The Peer recovers great damage; the King inflicts fine or imprisonment; so that upon the matter the offender is bound in chains, and brought and laid at my Lord's feet. Now, for him whose honour is thus guarded by the law, to avenge himself by his sword, is a most unpardonable excuse. I do not pretend, I do not offer to say, that the killing of a man is more capital in the case of a Peer than would be in

* Com. Journ. I am proud to think that the opposition to this iniquitous measure was led in either house by a lawyer.—*Life of Clarendon*, *ante*, p. 191.

† L. C., i. 165.

‡ 4 Parl. Hist. 375.

§ May 3, 1664.

the case of a private gentleman; but I do presume to affirm, that no provocation in the world can make that to be but manslaughter in the case of a Peer that would be murder in the case of a gentleman." The noble prisoner was acquitted of murder by all except two Peers (Ashley and Wharton,) and being found guilty of manslaughter pleaded his privilege and was discharged.*

Sir Jeffrey Palmer, after a lingering illness, dying in 1670, Sir Heneage Finch, as a matter of course, succeeded him in the office of Attorney-General, the duties of which he had long performed. He now took a more prominent part in the House of Commons, and stoutly defended the measures of the Government, which had become of a very unconstitutional and dangerous character.

He strongly opposed the "Coventry Act,"† and proposed that the punishment of "cutting to disfigure" should be only forfeiture of goods and imprisonment for life,‡—actuated, I fear, less by a dislike of capital punishment than by a desire to please the Court, who highly approved of the dastardly atrocity which gave rise to this piece of legislation.§

He successfully opposed a measure for enforcing the attendance of members of parliament, by enacting that defaulters should be doubly assessed to the subsidy, saying, "you have a power to fine them, and you may appoint a day to pay it, on penalty of expulsion from the House." It was rejected only by a majority of 115 to 98.‖

In 1671 a great controversy arose between the two Houses as to the right of the Lords to alter money bills, particularly in lowering rates voted by the Commons, the Lords having unanimously resolved "that the power exercised by them in making amendments and abatements on a bill for imposing duties on foreign commodities, both as to the matter, measure, and time concerning the rates and impositions on merchandise, is a fundamental, inherent, and undoubted right of the House of Peers, from which they cannot depart." There were various conferences on the subject, which were managed, on the part of the Commons, by Mr. Attorney-General Finch, who in vain tried to persuade the Lords, by citing precedents, and by appealing to their regard for the wishes and interests of the King, to abandon their amendments, and to pass the bill as it was sent up to them. Neither party would yield, and the bill was lost by a prorogation.¶ But the Commons ultimately prevailed; and allowing it to be highly proper that they should guard to themselves the right of granting the supplies, they have carried their jealousy of amendments by the Lords in money bills to a pitch unnecessary, coxcomical, and often highly detrimental to the public service.

The promotion of such an interloper as Shaftesbury to the office of

* 6 St. Tr. 786. So the Duchess of Kingston, being found guilty of bigamy in 1776, was discharged with a caution from the Lord High Steward "not to do the like again."

† 22 and 23 Car. 2, c. 1.

‡ 4 Parl. Hist. 466, 467.

§ Slitting the nose of Sir John Coventry by hired bravoes for a pleasantry uttered by him in the House of Commons upon the amorous propensities of the King.

‖ 4 Parl. Hist. 473.

¶ Ibid. 480, 487.

Lord Chancellor, upon the removal of Lord Keeper Bridgeman, must have been a heavy disappointment to [Nov. 1672.] Finch, who having been now above twelve years a law officer of the Crown, and having served with great applause, must have expected to succeed him "as the night the day." He found it convenient, however, to smother his indignation, and zealously to support his new master, even in the attempt to issue writs for the election of members of the House of Commons of his own authority, without the privity of the Speaker. When this subject came to be debated, Mr. Attorney, forgetting his late fight for the privileges of the Commons, boldly argued that it belonged to the Chancellor to issue the writs in vacation time, saying, "it is a necessity to the public that things may not be carried in a thin House; a Peer may knock at the door, and call for his writ to the Chancellor." It was nevertheless resolved, "that all elections upon the writs issued by the Chancellor since the last session are void, and that Mr. Speaker do issue out warrants to the Clerk of the Crown to make out new writs for those places." And this important and necessary privilege of the House of Commons has never since been disputed.

Finch boldly defended the famous "Declaration of Indulgence,"—on the King's universal and absolute dispensing power. "There is no question," said he, "of the King's power of dispensation where the forfeiture is his own. Where half the penalty is to the informer, the King may inform for the whole and dipense for the whole. The question is, whether the King cannot dispense with the laws in order to the preservation of the kingdom; and we are all miserable if he cannot."* This is the vaunted champion of the laws and constitution of his country !† He first contends for the power of dispensing with all penal laws, on the reasoning that they are only enacted to provide pocket-money for the King, who may therefore renounce what was intended for his private benefit ;‡ and having established this point, he invests the King with the prerogative of dispensing with all laws which he or his ministers may think inconsistent with the public safety, or, in other words, disagreeable to themselves !

His last appearance in the House of Commons was on the 31st of October, 1673, when Shaftesbury, openly intriguing with the heads of the country party, was about to be [Oct. 31, 1673.] turned out. The question was, whether the redress of grievances or the grant of supply should have the precedence?—and the aspirant to the Great Seal argued, "that *not first to give money*, is at this time a grievance not to be redressed in many ages."§

It was presently intimated to him that he was to be Lord Keeper, and the morning of Sunday, the 9th of November, was appointed for his investiture. We have already related the terrible fright he was then thrown into by Shaftesbury's waggery, and [A. D. 1673.]

* 4 Parl. Hist. 522. † 3 Bl. Com. 56.
‡ "Cuique licet renunciare juri pro se introducto."
§ 4 Parl. Hist. 592.

how, in the evening of the same day, he was made happy by the Great Seal being actually put into his hand, and his carrying it home with him as the true Lord Keeper.*

This is the official record of the event:—"S^{r}. Heneage Finch, K^{t}. & Bar^{t}., the King's Ma^{tys} Atturny Generall, received the Great Seale of England as Lord Keep^{r} from his Ma^{ty}, at Whitehall, on Sunday, in the evening, being the 9th of Nov^{r}., 1673, in the 25th year of his said Ma^{tys} raigne. The King sent for it the same day from the Earl of Shaftesbury, Lord Chancellor, by Mr. Secretary Coventry."†

His first act was to seal a pardon to his predecessor, which had been stipulated for when Shaftesbury took the office, foreseeing that he might probably do many things for which a pardon might be required, and wishing to have the pleasure of sinning with an indulgence in his pocket. He then sealed a commission authorizing the Master of the Rolls and others to hear causes in his absence.

On the 11th of November the new Lord Keeper had a grand procession from his house, in Queen street, Lincoln's Inn Fields, to Westminster Hall, attended by the Lord Treasurer, the Lord Privy Seal, the Duke of Buckingham, the Duke of Ormond, the Marquis of Worcester, many others of the nobility, the Judges, the King's Counsel, and all the gentlemen of the Society of the Inner Temple. Entering the Court of Chancery, he took the oaths of office, the Master of the Rolls holding the book.

According to ancient usage he ought then to have delivered an inaugural address, of which great expectations were formed from his rhetorical reputation; but he immediately called upon the Solicitor-General to move, and proceeded to business.‡ He probably was deterred from attempting a task which, in ordinary circumstances, he could have performed so easily and so gracefully, by the embarrassment of touching upon his predecessor, whom, according to the precedents, he ought to have praised for his learning and exemplary conduct, and proposed to himself as an example to stimulate his love of law and of virtue.

In a note to his MS. cases, he himself favours us with the following autobiographical account of these occurrences.

"Sunday, 9th November, 1673.

"At six at night I received the Great Seal from his Majesty at Whitehall, and was made C. S.—10th. I recipi'd my Lord Shaftesbury's pattent, which came to me from the Privy Seal. It was reported his Lordship kept the bill signed by him above a year and a half, for it was signed before he was Chancellor, as is said, and never meant to send it to the Seals till there was great necessity, and so hath covered all his misdemeanours as Chancellor. But this was a malicious report to his prejudice and mine, as if he had been false, and I too easy in this matter; for in truth the pardon did extend to the 6th of November,

* Ante, p. 261. † Crown. Off. Min. Book, fol. 73.

‡ Sir Francis North was then Solicitor-General, and was made Attorney-General the following day.

which could not possibly be by virtue of any old warrant; but the Chancellor, foreseeing his fall, obtained a warrant for a new pardon, signed by Mr. Secretary Coventry, and Mr. Solicitor North passed it on Saturday the 8th of November, and his Lordship intended to have sealed it as Chancellor, for the Privy Seal was directed to him by that name; but it was razed in the King's presence, and directed to me by name, with a *nuper Cancellarius* interlined where it mentioned him. Also I sealed a commission to the Judges and Master of the Rolls to hear causes, for by the change of the C. or C. S. the commission fayles. —11th. I took my seat and was sworn in Chancery; but I made no speech, as some of my predecessors have done, upon the occasion."

On the 10th of January, 1674, he was created Baron FINCH, of Daventry, in the county of Northampton; on the 19th of December, 1675, Lord Chancellor of England;* and on the 12th of May, 1681, Earl of NOTTINGHAM, which has become his historical name, and by which I shall henceforth designate him.

CHAPTER XCII.

CONTINUATION OF THE LIFE OF LORD NOTTINGHAM TILL HIS FIRST QUARREL WITH LORD SHAFTESBURY.

HE held the Great Seal and presided in the Court of Chancery nine years, during the whole of which time he devoted himself with indefatigable labour and with brilliant success, to the discharge of his judicial duties. I have great delight in relating, for the instruction and improvement of those who may aspire to rival his fame, the course he pursued. He did not consider his office as chiefly political, nor, anxious only to retain it, did he entirely occupy himself with court intrigues, or the management of a party in parliament; nor did he become indolent and remiss on reaching the great object of his ambition; nor did he dissipate his attention among a variety of pursuits,—from the vulgar ambition of being admired for universality of genius,—which leads ge-

* Of this further elevation we have the following account in his MS. reports:— "Sunday morning. The King going to chapell declared me Lord Chancellor, whereupon I kist his hand, and presently had the compliments of all the Court, and not long after from all the ambassadors and foreign ministers."

"The Right Honble. Heneage L[d]. Finch, Baron of Daventre, took the oath of Lord Chancellor of England in the High Court of Chancery, on Monday the 24th of January, in the 27th year of his Ma[tys] reign, being the first day of Hilary Terme; the book being held to him by S[r]. Harbottle Grimston, M[r]. of the Rolls, and the oath read by Mr. Bucher, Clerk of the Crown.

"His Majesty having been pleased on the 19th day of December before to take the Seale into his own hands, and to deliver it to him again by the stile of Lord Chancellor.

"M[d] he took only the oath of Chanc[r]."—*Crown Off. Min.* 54.

nerally to universal shallowness of acquirement. Placed at the head of the magistracy of a great country, he deemed it his first duty adequately to administer justice from his own tribunal; and for this purpose he did not think it enough merely to sit in public a certain number of hours, and to bestow decent pains upon each particular case which came before him. Justly regarding jurisprudence as a science which rests on general principles, and is illustrated and defined by the writings and rules of former jurists, he bore in mind that without a familiarity with these it was impossible that his own decisions should be consistent, systematic, and sound. He had peculiar difficulties to struggle with,—that Equity, which he was to administer had sprung up originally in England, more from a desire to get at what was thought the justice of a particular case between litigating parties, than to lay down methodical rules,—that many of his predecessors had been men not educated in the profession of the law, and incapable of apprehending legal distinctions,—that their judgments had been generally allowed to fall into oblivion as more likely to mislead than to guide,—and that no attempt had been made to classify or to systematize those which had been preserved. He had the sagacity to discover that Equity might be moulded into a noble code, supplying the deficiencies of the old feudal doctrines, and adapted to the altering necessities of a people whose commerce and wealth were so rapidly increasing.

Lord Nottingham had laid the indispensable foundation for being a great equity lawyer, by a profound knowledge of the common-law. His notes on Coke upon Littleton, published by Hargrave and Butler, in their edition of that great work, show how deeply he had studied it,—and several of his arguments handed down to us prove that our other institutional writers were equally familiar to him. He resorted early to a practice, without which, great proficiency cannot be made,—of writing on legal subjects. Besides his digested reports of cases which he had heard argued and determined, he wrote Treatises or Essays "on the King's Prerogative," and "on the Power of Parliament." Later in his career "EQUITY" fixed his attention, and while in full practice at the bar,—either for his own use in Court, or anticipating that he should one day hold the Great Seal, he composed a book, "*De Officio Cancellarii.*"*

But all this preparation, joined with most extensive practical experience at the bar, he now considered quite insufficient to enable him to preside creditably in the Court of Chancery. As soon as he received the Great Seal, he began, and he worked indefatigably every moment he could spare from other duties till he had completed, two new treatises,—one on the practice of the Court, and the other on the principles

* In one of his note books he thus refers to it: "I took this occasion to show that the Court of Chancery hath always had an admiralty jurisdiction, not only *per viam appellationis*, but *per viam evocationis* too, and may send for any cause out of the Admiralty to determine it here, of which there are many precedents in Noy's MS. 88, and in my little book in the preface 'De Officio Cancellarii,' sec. 18, and in my 'Parliament Book,' sec. 8, title 'Admiralty.'"

and doctrines of the Court. The first he entitled "A System or Collection of such Rules and Orders in Chancery as have at any time heretofore been printed or published; together with some explanations and alterations thereof, and additions thereunto, as also some observations,—what rules have been lately discontinued and yet may be fit to be revived, and what are fit to be laid aside. By F. C. S."* The other and more important work he entitled "Prolegomena of Equity." This, written in the piebald style then usual among lawyers, a mixture of bad Latin, bad French, and bad English,—contains, under methodical divisions, all that was then known of Equity, as contradistinguished from common law. The reader may be amused with some of the titles: Cap. 6. "Equity versus purchasor ne sera." 7. "Equity relieves en plusors cases l'ou les printed livres deny it." 12. "Of Trusts in general, quid sint." 30. "De Anomolies." 31. "L'ou les juges del common ley, ont agreed to alter it, sans act de parlement, et l'ou nemy," [or "*of Judge-made law*."]†

Thus was he much better acquainted with the practice and with the principles and doctrines of the Court than any of the advocates pleading before him, and having previously considered them systematically, he could readily see how they were to be applied, or extended, or restrained.‡

But what perhaps still more raised his judicial fame was the admirable habit which he adopted, and which has been revived and recommended by illustrious Judges still living,—of writing the judgment to be delivered in every case of importance,—whereby the Judge is forced to apprehend accurately both facts and law,—becomes fully acquainted with all difficulties and objections before he has publicly committed himself by any opinion,—and lays down and qualifies his positions with more nicety than it is possible for him to do in an extempore speech. In Lord Nottingham's MSS. still extant, are to be found almost all the important judgments he delivered while he held the Great Seal.§

* These letters C. S. show that the work was completed before Dec. 1675, when he was make Chancellor.

† The value of this treatise may be appreciated by the observations of that accomplished lawyer, Mr. Hargrave, on a copy of it made by himself: "In this copy of Lord Chancellor Nottingham's 'Prolegomena,' I have adhered closely to Mr. Heneage Legge's copy, except that I have avoided the numerous abbreviations in the latter, and that I have translated all the French words, and so made what was almost throughout a mixture of French and English, entirely English. The whole of this copy, except a few lines in page 2, is in my own handwriting. But from the interesting and valuable nature of the contents, I did not feel the labour of copying and translating as any fatigue."—See Preface to Hale's *Jurisdiction of Lords*, p. 153. This MS. treatise is likewise mentioned very respectfully by Sir W. Grant, in the Bishop of Winchester *v.* Paine, 11 Vesey, 200.

‡ Chief Justice Pemberton used to boast "that while he was a Judge, he had for his own share made more law than King, Lords, and Commons, since the time he was born."

§ There are in all 1170. In the folio volume containing them are to be found a few scattered memoranda, which show what a valuable Diary he might have kept. Under date Feb. 21, 1675, there is an account of Sir Matthew Hale coming into Chancery, to enrol the resignation of his office of Chief Justice of the Common

It may well be believed that he found the causes in a state of great confusion from the rashness and the timidity which had marked the beginning and the close of the short judicial career of his eccentric predecessor. The new Keeper made no parade of differing from him;—insomuch that it has been said that hardly any of Lord Shaftesbury's decrees were reversed, (a compliment I find paid almost to every Chancellor,) but on re-hearings, he quietly corrected irregularities and mistakes; and soon the business of the Court was in a better state even than in the time of Lord Keeper Coventry, whose successors had almost demolished the system of equity which he was beginning to create.

He exerted himself to the utmost to prevent delay, with which, partly from a deficient judicial staff, but more from the nature of the suits, Equity has always been unjustly taunted by the multitude. A case once being mentioned to him in which he was told the bill had been filed previous to the commencement of the civil war, and had been heard and re-heard before all the Lord Chancellors, Lord Keepers, and Lords Commissioners of the Great Seal who had sat in Chancery ever since, he instantly appointed a time for its being finally disposed of, and declared that he would rather sit on five or six days, himself making inquiries and taking accounts, than it should again be referred to a Master and continue the opprobrium of the Court.†

Lord Nottingham never even incurred the suspicion of bribery, or of being influenced by the solicitations of King or Courtiers. Luckily for him, no political case came before him in the Court of Chancery, and his fame is untarnished by the charge of having given way to party bias. We are therefore allowed to look up to him as a Judge with unmixed admiration. He was one of the most distinguished and meritorious of the great men who have adorned the magistracy in England, and who, if they have not hitherto acquired such general celebrity, may well bear a comparison with the Oxenstierns, Molés, and d'Aguesseaus of the continental nations.

I wish I could be excused from following his track as a statesman, where, although his conduct may be palliated, it cannot possibly be defended. Taking no lead in the cabinet, he is not chargeable with originating bad measures, like Shaftesbury; but he gave himself up implicitly to those ministers who successively ruled in the King's name, concurring in their policy, and openly and indiscriminately justifying it, whatever it might be. He seems to have considered himself merely as

Pleas,—and another details how on Sunday, the 12th of Feb. 1678, the King, on returning from Chapel, sent for the Chancellor to wait upon him alone in his closet at Whitehall, and there desired him to attest a document written with his own hand, the purport of which was "that he had never been married to the Duke of Monmouth's mother, or to any one except Queen Katherine."

* The late Mr. Jekyll told me that soon after he was called to the bar, a strange solicitor coming up to him in Westminster Hall, begged him to step into the Court of Chancery to make a motion of course, and gave him a fee. The young barrister pleased, but looking a little surprised, the solicitor said to him, "I thought you had a sort of right, sir, to this motion, for the bill was drawn by Sir Joseph Jekyll, your great-granduncle, in the reign of Queen Anne."

the retained advocate of the Court, bound in duty to do the best for his clients, according to the instructions he received from them, without any misgivings that he compromised his own character by trying to show that criminal acts were innocent, or by using arguments which he must have known to be fallacious.

It has been urged in his defence, that his only choice was to go over to the country party, whose measures, at this time, were still more reprehensible; but it will be seen that, to weaken that party, he was willing to advance beyond them in their worst excesses; and if, after vigorous efforts, he could not influence the counsels of the government to which he belonged, he had always before him an honourable retreat in a private station.

We have very scanty accounts of his parliamentary efforts after he held the Great Seal,—except of his speeches on the opening of parliament, which are not at all interesting, being vague and dull, and instead of containing, as formerly, lively personal sallies, evidently bearing marks of having been, like modern royal speeches, elaborated in the cabinet.

The first of these he delivered on the 7th of January, 1674,—according to the absurd fashion of the Lord Keeper addressing the two Houses, when the King had concluded, and after kneeling down and receiving directions from his Majesty,—reciting an oration before his Majesty in his Majesty's praise. Having enumerated the recent measures of the government, which he imputes to the wisdom and virtue of the King, he says, on this occasion, "These are not single and transient acts, but such acts as flow from habits; these are not leaves and blossoms, but true, solid, and lasting fruits. Long! long! may that royal tree live and flourish upon which these fruits do grow!" He is not less complimentary, nor more sincere, in speaking of the parliament, which had become very troublesome and factious. "Posterity will have cause to doubt which was the greater felicity of the two, that Providence which restored the Crown, or that which sent us such a parliament to preserve it when it was restored. What may not the King now hope from you? What may not you assure yourselves from him? Can any thing be difficult to hearts so united, to interests so twisted and interwoven together as the King's and yours are? Doubtless the King will surpass himself, at this time, in endeavouring to procure the good of the kingdom. Do you but excel yourselves, too, in the continued evidences of your affections, and then the glory of reviving the state will be entirely due to this session. Then they who wait for the languishing and the declination of the present government will be amazed to see so happy a crisis, so blest a revolution; and ages to come will find cause to celebrate your memories as the truest physicians, the wisest counsellors, the noblest patriots, and the best session of the best parliament that ever King or kingdom met with."*

[JAN. 6, 1674.]

* 4 Parl. Hist. 612.

The response was by an address for a fast for the heinous sins of the nation, and the introduction of measures for the impeachment of the Duke of Buckingham, the Duke of Lauderdale, and the Earl of Arlington.

In the session of 1675 the policy of the Court was to outbid the opposition in zeal for Protestantism; and the Lord Keeper said, "His Majesty has considered religion, first, in general, as it is Protestant, and stands opposed to Popery; and upon this account it is that he hath awakened all the laws against the papists: there is not one statute extant in all the volume of our laws but his Majesty has now put it in a way of taking its full course against them. His Majesty, with equal and impartial justice, hath revived all the laws against dissenters and nonconformists, but not with equal severity; for the laws against the Papists are edged, and the execution of them quickened by new rewards proposed to the informers; those against dissenters are left to that strength which they have already."* The only subject which shares his solicitude for the true religion is "the excess of new buildings near London and Westminster; a growing mischief which nothing but a new law can put a stop to; a mischief which, for a long time, hath depopulated the country, and now begins to depopulate the city too, by leaving a great part of it uninhabited."†

[April, 1675.]

The cry of "*No popery*," which the ministers now bawled out more loudly than their antagonists, brought them into such favour that they thought to crush Shaftesbury for ever by "the Passive Obedience Test Bill," requiring an oath never to attempt any change in the law respecting either church or state. This was strenuously supported by Lord Nottingham, and being carried in the Lords after seventeen days' debate, was considered as having for ever extinguished free discussion in parliament and in the country,—when it was defeated by the controversy got up between the two Houses respecting the right of the Lords to entertain appeals from Courts of Equity.‡ The Chancellor had the sagacity to see the trap laid for the government; but he had not the address to avoid it. He was bound to second the resolutions which Shaftesbury moved, asserting the jurisdiction of the Lords for the alleged benefit of the community, "who must otherwise depend on the caprice of the Sovereign to grant or to refuse a commission of appeal," —and he could not control the fervour of the friends of the government in the other House, who, mad on this question of privilege, disregarded all party predilections, and stood up for their own notions of the rights of their order.

During these debates, the Ex-chancellor and the reigning Lord Chancellor being pitted against each other, the latter suffered severely. I have already related his discomfiture, when thinking Shaftesbury had committed himself by declaring, "I know not what is meant by the Protestant religion," he rashly exclaimed, "*Tell it not in Gath.*"§

* 4 Parl. Hist. 673.
† Ibid. 674.
‡ Ante, p. 263.
§ Ante, p. 263.

On a subsequent day, having been hard pressed by some taunts about his late measures,—instead of vindicating himself, he sought to recriminate by thanking God that he did not advise the breaking of the Triple Alliance; that he did not advise the shutting up of the Exchequer; and that he did not advise the Dutch war. The King being present, Shaftesbury, with great dexterity, conveyed an impression that he himself was not responsible for proposing these measures—without naming the author of them. Lord Arlington, who disliked the Chancellor, asked the King which of the two had acted most respectfully towards him; since he knew how open Lord Shaftesbury could have laid those affairs, and yet, under such provocations, he only cleared himself, and still kept the secret. The King thereupon rebuked the Chancellor for meddling with the secrets of the Council in so public a place, and told him "he knew nothing of those matters."*

But, in the vicissitudes of political warfare, Nottingham had by-and-by the satisfaction to witness Shaftesbury's blunders, in contending that, after an adjournment for fifteen months, [FEB. 1677.] the parliament was *ipso facto* dissolved. He was obliged, it is true, to resort in debate to the miserable quibble that the words "yearly, and oftener if need be," in the statute of Edward III., for the frequent holding of parliaments, gave the King a discretion to decide whether there *be need* to summon a parliament yearly; but he addressed a willing audience, eager to swallow any sophistry which flattered their prejudices; and, finding it his "painful duty" to move the commitment of the four leaders of the opposition to the Tower, he saw them marched off in custody, and himself and his friends left in the undisputed possession of the field of battle.

The happiest period of his life probably was the fifteen months during which Shaftesbury lay a prisoner in the Tower,—particularly after the Court of King's Bench refused to discharge him, and it was quite certain that, being at the mercy of a ministerial majority in the Lords, the agitator must make humiliating concessions, or continue in a state of suspended animation. But his most swelling moment, no doubt, was that when Shaftesbury, seeming to have fallen, like Lucifer, never to rise again,—on bended knee,—amidst the scoffs of foes, and the blushes of his friends,—repeated after him the abject apology, "I Anthony,"† &c.,—acknowledging his heinous transgression,—expressing his deep contrition,—and promising amendment of life.

The Popish Plot soon saved Shaftesbury from shame and insignificance,—and that breaking out, he was, in a moment, more formidable than he had ever been.

In viewing Lord Nottingham's conduct at this crisis, we must charitably suppose that, like Lord Russell, and other very sensible persons, he was the dupe of Titus Oates; for, otherwise, we must set him down as one of the most infamous of mankind,—premeditatedly dealing in calumny and murder to serve his own selfish ends.

* Martyn's Life of Shaftesbury, i. 423. † Ante, p. 270.

At the opening of the session of 1679, he said,—"At home we had [March, 1679.] need to look about us; for his Majesty's royal person hath been in danger by a conspiracy against his sacred life, maliciously contrived and industriously carried on by those Seminary Priests and Jesuits, and their adherents, who think themselves under some obligation of conscience to effect it; and having vowed the subversion of the true religion amongst us, find no way so likely to compass it as to wound us in the head, and to kill the Defender of the Faith. It hath ever been the practice of those votaries first to murder [A. D. 1680.] the fame of princes, and then their persons; first to slander them to their people as if they favoured Papists, and then to assassinate them for being too zealous Protestants. Enough hath appeared to bring some capital offenders to public justice; some of the traitors have been executed; several priests have been arrested and imprisoned; all are hiding themselves and lurking in secret corners, like the sons of darkness. But their expectations are vain, as their designs are wicked; for his Majesty hath already begun to let them see with what severity he means to proceed against them. He hath passed a law to disable all the nobility and gentry of that faction ever to sit in parliament; and, not content with that, he did offer to the last parliament, and does again renew the same offer to this parliament, to pass any further laws against Popery."*

There is therefore no foundation for the attempts which have been made to fix the odium of the Popish Plot, and of all the atrocities perpetrated in consequence of it, exclusively on the liberal party; for the Tories, represented by Danby and Nottingham, either under delusion, —or, what would be infinitely worse, knowingly,—from sinister motives, joined with eagerness in inflaming the multitude, and hallooing them on to blood.

While the disgraceful ceremony was proceeding of the sacrifice of [A. D. 1680.] Lord Stafford, Nottingham gave the most decided proof of his own fanaticism or rascality. Presiding as Lord High Steward,—I am afraid he showed, by his address to the prisoner, at the very opening of the trial, that this virtuous man was prejudged. "As it is," said he, "impossible for my Lords to condemn the innocent, so is it equally impossible that they should clear the guilty. If, therefore, you have been agitated by a restless zeal to promote that which you call the Catholic cause; if this zeal have engaged you in such deep and black designs as you are charged with, and this charge shall be fully proved, then you must expect to reap what you have sown; for every work must and ought to receive the wages that are due to it."†

When a verdict of *guilty* had been given by a majority of fifty-five, [A. D. 1680.] consisting of the Lord High Steward, the Lord President of the Council, the Lord Privy Seal, and many high-church Peers, against thirty-one, comprising Lord Holles, and several other Presbyterian Peers, and a motion in arrest of judgment had been

* 4 Parl. Hist. 1087, 1111. † 7 St. Tr. 1297.

overruled,—his Grace proceeded to pass sentence (according to the expression of Evelyn who was present) "with greate solemnity and dreadful gravity."

Lord High Steward. "My Lord Stafford, my part which remains is a very sad one; for I never yet gave sentence of death upon any man, and am extremely sorry that I must begin with your Lordship. Who would have thought that a person of your quality, of so noble an extraction, of so considerable estate and fortune, so eminent a sufferer in the late ill times, so interested in the preservation of the government, so much obliged to the moderation of it, and so personally obliged to the King and his royal father for their particular favours to you, should ever have entered into so infernal a conspiracy as to contrive the murder of the King, the ruin of the state, the subversion of the religion, and, as much as in you lay, the destruction of all the souls and bodies of three Christian nations? And yet the impeachment of the House of Commons amounts to no less a charge, and of this charge their Lordships have found you guilty. That there hath been a general and desperate conspiracy of the Papists, and that the death of the King hath been all along one chief part of the conspirators' design, is now apparent beyond all possibility of doubting. What was the meaning of all those treatises, which were published about two years since, against the oath of allegiance, in a time when no man dreamt of such a controversy? What was the meaning of Father Conyer's sermon upon the same subject, but only because there was a demonstration of zeal, as they call it, intended against the person of the King, which the scruples arising from that oath did somewhat hinder? To what purpose were all the correspondencies with foreign nations? the collections of money among the Fathers abroad and at home? What was the meaning of their governing themselves here by such advices as came frequently from Paris and St. Omer's? And how shall we expound that letter which came from Ireland, to assure the Fathers here, that all things were in readiness there too, as soon as the blow should be given; *Does any man now begin to doubt how London came to be burnt? Or by what ways and means poor Justice Godfrey fell? And is it not apparent, by these instances, that such is the frantic zeal of some bigoted Papists, that they resolve no means to advance the Catholic cause shall be left unattempted, though it be by fire and sword?* My Lord, as the plot in general is most manifest, so your Lordship's part in it hath been too plain. What you did in Paris, and continued to do at Tixall, in Staffordshire, shows a settled purpose of mind against the King, and what you said at London touching honest Will, shows that you were acquainted with that conspiracy against the King's life, which was carrying on here too: and in all this there was a great degree of malice; for your Lordship at one time called the King '*heretic*' and '*traitor to God;*' and at another time you reviled him for misplacing his bounty, and rewarding none but traitors and rebels. And thus you see, that which the wise man forewarned you of, is come upon you:—'*Curse not the King, no not in thy heart: for the birds of the*

air shall reveal, and that which hath wings will declare the matter.' Three things I shall presume to recommend to your Lordship's consideration. In the first place, your Lordship sees how it hath pleased God to leave you so far to yourself, that you are fallen into the snare, and into the pit which you were digging for others. Consider, therefore, that God Almightv never yet left any man who did not first leave him. In the next place, think a little better of it than hitherto you have done, what kind of religion that is, in which the blind guides have been able to lead you into so much ruin and destruction as is now like to befall you. In the last place, I pray your Lordship to consider, that true repentance is never too late. A devout, penitential sorrow, joined with an humble and hearty confession is of mighty power and efficacy both with God and man. There have been some of late, who have refused to give God the glory of his justice, by acknowledging the crimes for which they were condemned; nay, who have been taught to believe, that it is a mortal sin to confess that crime in public, for which they have been absolved in private, and so have not dared to give God that glory which otherwise they would have done. God forbid your Lordship should rest upon forms! God forbid your Lordship should be found among the number of those poor forsaken souls, whom the first thing that undeceives is death itself! Perhaps your Lordship may not much esteem the prayers of those whom you have long been taught to miscall heretics; but whether you do or no, I am to assure your Lordship, that all my Lords here, even they that have condemned you, will never cease to pray for you, that the end of your life may be Christian and pious, how tragical soever the means are that must bring you thither. And now, my Lord, this is the last time that I can call you 'My Lord,' for the next words I am to speak will attaint you. The judgment of the law is, and this Court doth award that, 'You go to the place from whence you came; from thence you must be drawn upon a hurdle to the place of execution; when you come there, you must be hanged up by the neck, but not till you are dead, for you must be cut down alive,'—" &c., &c.

Lord Stafford begged that he might no longer be kept a close prisoner as he had long been, and that his wife and children might be admitted to see him till his death.

L. H. S. "My Lord Stafford, I believe I may with my Lords' leave tell you one thing farther, that my Lords, as they proceed with rigour of justice, so they proceed with all the mercy and compassion that may be; and therefore my Lords will be humble suitors to the King, that he will remit all punishment but the taking off your head."

His Grace, complacently swelling with the consciousness of his humane intentions, then broke his white staff, and dissolved the Commission.*

He received the thanks of the House of Lords for his speech in passing sentence, and was desired to print it.† Nevertheless, his con-

* 7 St. Tr. 1217—1558.

† Lords' Journ. Dec. 7, 1680. Burnet says, "Lord Nottingham, when he gave

duct upon this occasion, it must be acknowledged, reflects deep disgrace upon his memory, and greatly detracts from the respect with which we should regard him as a civil Judge. [A. D. 1680.] Assuming that he was carried away by the general frenzy,—not imputing to him the diabolical purpose of trying to gain a wretched popularity to the government by shedding innocent blood,—he is still to be severely censured. Placed in his elevated position—

> "Despicere, unde queas alios passimque videre
> Errare, atque viam palanteis quærere vitæ"—

it was his duty to have guided the peerage of England to the rescue of an innocent man, instead of acting as their high priest to offer him up a victim to the idols of bigotry and prejudice.

If he was sincere, it may mitigate our censure of his credulity to recollect that it was shared by the virtuous Lord Russell, who upon this occasion went so far as even to question the power of the King to mitigate the sentence in the manner suggested by the Lord Chancellor,—on the ground that the prosecution was not by the King but by the House of Commons. The repugnance to cruelty which can never be extinguished in the English nation, operated so powerfully upon this occasion, that the Chancellor prevailed, without difficulty, in having the whole of the sentence remitted except the beheading, and the House of Commons magnanimously resolved, "that this House is content that the sheriffs of London and Middlesex do execute William, late Viscount Stafford, by severing his head from his body only."*

But the Chancellor found himself involved in a most serious controversy with the Commons, from the attempt made to stop their prosecution of the Earl of Danby. The impossibility was at last discovered of longer retaining this minister, who, notwithstanding all his arts to court popularity, had become generally odious.† Charles was now willing to abandon him; but he dreaded the trial of the impeachment, which would have brought out his secret treaties with France, the bribes he had received from that country, [MARCH, 1679.] and various other secrets of his misrule. The expedient resorted to was to grant a pardon to Danby, which should be pleaded in bar of the impeachment. But a parliamentary impeachment never had been so stopped; and although Nottingham would probably have got over his doubts as to the regularity of the proceeding, if it had been perfectly safe to himself,—he knew that he must give deep offence to the House

judgment, delivered it with one of the best speeches he had ever made. But he committed one great indecency in it; for he said, 'Who can doubt any longer that London was burnt by the Papists?' though there was not one word in the whole trial relating to that matter."

* Com. Journ. Dec. 23, 1680. It is some consolation to think, that this infamous attainder has been reversed, and that his honours and estates are now enjoyed by his descendants.

† Nottingham was the last to give up the Lord Treasurer: "The Lord C. is more my Lord Danby's friend than any body; he got him to keep his stall ten days, which cost the King 200,000*l*." *H. Sydney's Diary*, vol. i. p. 3.

of Commons by putting the Great Seal to such an instrument, and that the power of the country party was there at that time almost irresistible. He therefore refused to pass the pardon. Still the impeachment must be stopped. He would not voluntarily resign. There was no desire of getting rid of a Chancellor usually so complying. Under such circumstances this most unworthy trick was practised,—devised by whom I know not,—but I am ashamed to say, sanctioned by Nottingham. The pardon, being drawn up in proper form, was delivered to the King; Nottingham was summoned to Whitehall, and desired to bring the Great Seal with him. On his arrival, he was desired to seal the pardon. He begged leave respectfully to inform his Majesty that he had such scruples as to the regularity of granting a pardon pending a parliamentary impeachment, that he must be excused doing so without farther consideration. The King then took the Seal from him, and either affixed it to the pardon with his own hand, or caused this to be done by an officer of the Court acting under his orders. He then handed the pardon to the Earl of Danby, and taking up the Seal returned it to the Earl of Nottingham, saying, "Take it back, my Lord; I know not where to bestow it better."

The pardon being pleaded in bar of the further prosecution of the impeachment, the Commons were thrown into a fury, and appointed a select committee to inquire into the manner in which it had been granted. The committee finding no entry of the pardon in any of the public offices, requested information on the subject from the Lord Chancellor, who stated to them how "his Majesty commanded the Seal to be taken out of the bag, which his Lordship was obliged to submit unto, it not being in his power to hinder it, and then writing his name on the top of the parchment, had the pardon sealed; and that at the very time of affixing the Seal to the parchment he did not look upon himself to have the custody of the Seal."* The Commons sent a message to the Lords demanding justice on the Earl of Danby, and an address to the King, complaining of the irregularity and illegality of the pardon.

Although Danby, after a temporary concealment, surrendered himself, and was committed to the Tower, where he lay under this charge five years,—on account of the temporary introduction of Shaftesbury into the ministry, and the rapid events which followed till the dissolution of the Oxford parliament, the impeachment was not prosecuted, and the grand question which the plea in bar raised was never judicially determined. Nor was it even expressly set at rest by the Bill of Rights, notwithstanding a vote of the House of Commons at the time of the Revolution that a pardon is not pleadable in bar of an impeachment. But at last, by the Act of Settlement, 12 & 13 W. 3, c. 2, it was *enacted*, "That no pardon under the Great Seal of England be pleadable to an impeachment by the Commons in parliament." This restriction is necessary for discovering and exposing ministerial delinquency; but after conviction the power of pardon is vested in the

* 4 Parl. Hist. 1114. 11 St. Tr. 766.

Crown, to be exercised by responsible advisers,—where the prosecution has been by impeachment as well as in the name of the King,* although, according to the old law, where a capital prosecution was instituted by appeal at the suit of the party injured the prosecutor might pardon, but the King could not.†

It must have been an amusing sight, immediately after this controversy about Danby's pardon, during which Shaftesbury had vowed that "he would have Nottingham's head," to have seen the two sitting next each other in council, and seemingly on terms of cordiality. But they hated each other as much as ever, and secretly prepared for a rupture. Nottingham, not venturing openly to oppose Shaftesbury's Habeas Corpus Bill, in vain intrigued to have it thrown out, by the expedient of a difference between the two Houses, which had been so successfully worked against himself.

Hopes were entertained that Shaftesbury might now be prevailed upon to give up his Exclusion Bill; but he, feeling that his only chance of permanent power was to compel the King to take him for his sole minister, and to recognise Monmouth for his successor, thwarted the measures of Nottingham and the inner cabinet, and showed himself as hostile as ever to the Duke of York. It was no surprise to Nottingham, although it was to Shaftesbury, when the King, without any previous deliberation with the Council, suddenly turned round to him, and ordered him first to prepare a commission for proroguing parliament, and then a proclamation to dissolve it.‡

Shaftesbury being immediately turned out of office, Nottingham and he for the rest of their days were at open and mortal enmity with each other.

CHAPTER XCIII.

CONCLUSION OF THE LIFE OF LORD NOTTINGHAM.

During the short parliament which met in October, 1680, Nottingham, under the Earl of Halifax, assisted the ministerial majority in the House of Lords to counteract the schemes of Shaftesbury, who made a stout fight in his own House, and dictated all the resolutions of the other. The Exclusion Bill being renewed in the Commons was followed up by addresses to remove Halifax and Seymour, who opposed it, and by impeachments of Scroggs, Jeffreys, and North, for their obstruction of the prosecution of the Duke of York as a Popish recusant, and their interference with the right of petitioning. In spite of Nottingham's very superior legal acquirements, Shaftesbury seems generally to have had the advantage over him in debate, even on constitutional questions,

* After the conviction on impeachment of the six rebel lords in 1715, three of them were pardoned.

† 4 Bl. Com. 400.

‡ Ante, p. 260.

—the "Patriot" making up for his deficiency in knowledge by boldness of assertion and bitterness of sarcasm. The poor Lord Chancellor, leading such an uneasy life, must have very heartily concurred in the resolution to put a sudden end to this parliament; and, thankful for the respite, must joyfully have pronounced the words by which it was dissolved, although another was summoned to meet at Oxford as a last experiment, before laying parliaments entirely aside. [Jan. 18, 1681.]

On the last day of the session he assisted the King in a most unworthy manœuvre,—to steal from the table a disagreeable Bill, which both Houses had passed "for the protection of Dissenters from being prosecuted for not going to their parish church,"—so that it was defeated without the odium of a public exercise of the royal veto.* This affair might have led to very serious consequences to the Chancellor if he had been questioned for it by a patriotic House of Commons, backed by an approving public; but the House of Commons was outrageously factious—the public were disgusted with it,—and he escaped.

When the Oxford Parliament met, fortune favoured him in every thing. The Commons took up with great eagerness the stealing of the Dissenters' Relief Bill; but they rejected with contumely all the King's proffered concessions to guard the reformed religion from the Popish successor by banishing him from the kingdom for life, and providing that the next Protestant heir should govern as Regent in his name;—and to defeat the government prosecution of their informer Fitzharris, they resolved that they would themselves impeach him for high treason before the House of Lords. This last was Shaftesbury's fatal blunder. A great many Protestant zealots still stuck by him for the "exclusion," while the more discerning members of his party now saw through his design of gaining power to himself by trying to establish the legitimacy of the Duke of Monmouth,—but nearly all were shocked by observing a capital prosecution sported with as an instrument of faction, and an attempt to try a commoner for his life before those who were not his peers. [March 21, 1681.]

Nottingham dexterously seized the advantage presented him, and advised the Lords to reject the impeachment, on the ground that Fitzharris, as a commoner, was entitled to be tried for this offence by a jury of commoners. We have a very imperfect report of his speech on this occasion; but he seems very successfully to have thrown odium on the House of Commons for betraying the rights of their constituents, under pretence of supporting their own privileges; and he brought forward, with prodigious effect, the precedent of the judgment on the murderers of Edward II., where it was declared in full parliament that commoners should not thereafter be tried on a capital charge by the House of Lords.†

While the Commons voted the rejection of the impeachment "a

* Ante, p. 285.

† See *ante*, p. 287. Hale's Jurisdiction of the House of Lords, c. xiv.

denial of justice," the nation on this question took part with the Lords; and the sudden dissolution of the parliament gave a decided victory to the Court.* [MARCH 28, 1681.]

Here ended Nottingham's senatorial career, the King ruling by high prerogative alone during the rest of his reign.

He had on two other occasions, which I have not mentioned, presided in the Lords as High Steward on the trial of Peers. The first was that of the Earl of Pembroke and Montgomery, for the murder of a Mr. Cony in an affray in a tavern. In a note to his MS. Reports, Nottingham has left an account of the ceremonial on this occasion, to which he seems to have attached great importance. "Being come to the Lords' House, and retired to putt on my robes, after prayers said, wee adjourned the House into Westminister Hall, and went, in the order prescribed, through the Painted Chamber, Court of Requests, and Court of Wards, into the Hall. In which procession the Duke of York and Prince Rupert,† to do honour to the King's Lieutenant (for so they called me), gave me the precedence, and suffered me to come last all the while, till the tryall was over and the white staff broken. When we came into Westminster Hall, the Court was prepared like the House of Peers in all points; with scaffolds on each side for the spectators, and a place for all the foreign ministers. So the Lords spirituall and temporall did quickly know their own places. I took my place upon the woolsack, near the cloth of state, but not directly under it, haveing first made my obeysance to the chaire, and then to the King and Queen, who satt by al *incognito*."

The Lord High Steward is reported to have delivered a preliminary address to the noble prisoner, by way of encouraging him, which seems to have been in a strange taste: "Let not the disgrace of standing as a felon at the bar too much deject you; no man's credit can fall so low but that if he bear his shame as he should do, and profit by it as he ought to do, it is in his own power to redeem his reputation. Therefore let no man despair that desires and endeavours to recover himself again; much less let the terrors of justice affright you; for though your Lordship have great cause to fear, yet whatever may be lawfully hoped for, your Lordship may expect from the Peers."

Lord Pembroke, being found guilty of manslaughter, was discharged with an admonition, that upon a second conviction for the like offence he would be liable to be hanged.‡

The other case occurred soon after, and excited considerable interest, being that of a minor peer, a schoolboy, prosecuted for the murder of a companion, with whom he had quarrelled in the palace at Whitehall. The Lord High Steward's address to encourage the accused, was again any thing but encouraging. "My Lord Cornwallis, the violation of the King's peace, in the chief sanctuary of it, his own royal palace, and in so high a manner as by the death of one of his subjects, is a matter

* 4 Parl. Hist. 1298—1339.

† Duke of Cambridge,—but he still went by his *nom de guerre*.

‡ 6 St. Tr. 1309.

that must be accounted for. It is your Lordship's great unhappiness, at this time, to stand prisoner at the bar under the weight of no less a charge than an indictment of murder. And it is not to be wondered at if so great a misfortune as this be attended with some sort of confusion of face; when a man sees himself become a spectacle of misery in so great a presence, and before so noble and so illustrious an assembly. But be not yet dismayed, my Lord, for all this; let not the terrors of justice so amaze and surprise you as to betray those succours that your reason would afford you, or to disarm you of those helps which good discretion may administer, and which are now so necessary. It is indeed a dreadful thing to fall into the hands of justice, where the law is the rule, and a severe and inflexible measure both of life and death."

It turned out, however, that the poor young Lord was hardly at all to blame; and notwithstanding strong speeches against him by Sir William Jones, the Attorney-General, and old Serjeant Maynard, and that he was not allowed counsel to assist him, he was acquitted both of murder and manslaughter, to the great joy of the bystanders.*

Nottingham survived the dissolution of the Oxford parliament nearly two years, and, continuing Chancellor, is chiefly responsible for the unconstitutional system of government by which justice was perverted, and every institution was attacked which had a tendency to check the arbitrary will of the Sovereign. He sanctioned the execution of Fitzharris for publishing a libel, and of College, "the Protestant joiner," for making violent speeches at public meetings;—he approved of the plan of wreaking the vengeance of the Court on the popular leaders, by prosecuting them for high treason;—he signed the warrant for the arrest of Shaftesbury, and his commitment to the Tower, on the unfounded charge of having conspired to control the King at Oxford by military violence:—he kept his political opponent many months illegally imprisoned, refusing either to discharge him or to bring him to trial;—and he concurred in the irregular attempts to prevail on a grand jury to find an indictment for high treason against him, intending,—if the indictment had been found, to sit upon his trial as Lord High Steward, and, with the assistance of Peers to be selected for the occasion, to have consigned him to the scaffold. What is still more culpable, he poisoned the fountains of justice. He removed from the Commission of the Peace, throughout England, all magistrates whose political principles were adverse to his own, substituting for them the men that could be found most noted for their love of passive obedience, and their hatred of religious toleration. By the same rule did he universally appoint Sheriffs, by whom juries were to be returned,—except the Sheriffs for London and Middlesex, who by ancient charters, held sacred through a long succession of ages, were elected by popular choice. In violation of these charters, he procured the nomination of men who were the mere tools of the Government to be Sheriffs for

* 7 St. Tr. 143.

London and Middlesex;—he instituted arbitrary proceedings in the Court of King's Bench to have those charters cancelled;—and he arbitrarily removed and appointed Judges in this Court, that, contrary to the established law of the land, his purpose might be accomplished.

But he has not to answer for the blood of Russell and Sydney, as he was removed from this mortal scene before the worst atrocities of the reign of Charles II. were completed. He had long suffered from the gout; and his attacks from that disorder had become so frequent and severe, that he was for months together prevented from attending the House of Lords, the Court of Chancery, or the Council. Chief Justice North used to sit for him frequently as Speaker of the House of Lords, and sometimes in the Court of Chancery, although his love of his work there induced him to struggle to perform it in person, when from bodily suffering he might well have been excused for throwing it on others. "I have known him," observes Roger North, "sit to hear petitions in great pain, and say that his servants had led him out, though he was fitter for his chamber."* His frame becoming more and more enfeebled, —soon after the flight of Shaftesbury to Holland, and about a month before the death of his predecessor in office and perpetual rival, Nottingham's career was for ever closed. He expired on the 18th of December, 1682, at his house in Great Queen Street, Lincoln's Inn Fields, in the 61st year of his age.

His remains were interred in the parish church of Ravenstone in Buckinghamshire, where he had an estate which had belonged to Cardinal Wolsey, and reverting to the Crown, had been granted to Sir Moyle Finch, the Chancellor's grandfather. A splendid monument was erected to his memory by his eldest son, which thus describes him:—

"A Person
Of extraordinary natural endowments, and for manly and unaffected eloquence,
Universal learning, uncorrupted justice, and indefatigable diligence;
Most exemplary piety, large and diffusive charity, not unequal to any
That have gone before him, and an eminent example to posterity,
In whom all the virtues, that make a great and good man
Were very conspicuous, without the blemish of any vice."†

It is impossible with the slightest regard to justice to concur in the unqualified praise bestowed upon him as a statesman. Although he had no gratuitous love of despotic government, yet his respect for the constitution was always ready to give way to his own interest, and there

* Life of Lord Guilford, i. 49. His absences from Parliament were occasionally suspected to be from the apprehension of encountering Shaftesbury, as we learn from a stanza in "a loyal song:"—

"Ask me no more why little Finch
From parliament began to winch;
Since such as dare to hawk at kings,
With ease can clip a Finch's wings."

† His origin, offices, and alliances, are detailed at great length. The monument likewise contains a Latin inscription still more florid. I am indebted for a copy of this to the kindness of the Rev. Mr. Godfrey, the present Vicar of Ravenstone.

were no measures, however arbitrary, brought forward by the Court while he was in office, that he did not zealously assist in executing and defending. His wanton accusation against the Catholics in pronouncing sentence upon Lord Stafford, "that they had burnt the city of London and murdered Sir Edmondbury Godfrey," I am afraid we must set down to a desire to acquire popularity to the administration,—and he must have regretted it in his heart, though he was rewarded for it with an earldom.

In every other point of view we are at liberty to regard him with unmixed admiration. Considering how very few individuals have distinguished themselves in the profession of the law in England, who have not been urged by necessity to the labour and the sacrifices which it demands, we must honour the energy and steadfastness of purpose which enabled him, the early possessor of large hereditary wealth, to devote himself to the dry study of jurisprudence, and when he had mastered it, to renounce the alluring pursuits which were open to him, that he might attend to the business of his clients in Westminster Hall.

When he had received the Great Seal, he had not yet reached the summit of his ambition,—which was to acquire the reputation (hardly aimed at by his predecessors) of being a consummate Equity Judge, and of reducing "Equity" as contradistinguished from the common law of England into a scientific system. I have already tried to describe the noble efforts which he made for that purpose.*

Unfortunately, the brilliancy of his success is impaired to us by the imperfect record of it. His name as a Judge has not utterly perished from the entire want of Reporters; but the printed accounts of his decisions are wretchedly bad. Much inconvenience does arise from the multiplicity and copiousness of Reports in modern times; but we ought to recollect the great advantage we derive from full and accurate statements of all that passes in our courts of justice,—whereby Judges, speaking to the nation, are constantly on their good behaviour, and while what is trivial soon sinks from notice, that which is important is imperishably preserved. The art of Equity reporting, though still capable of improvement, has advanced exceedingly, and the worst Equity Reports now are better than the best of the reign of Charles II.

For what Lord Nottingham did and said in the Court of Chancery, we have chiefly to trust to a folio published in 1725, entitled "Reports Tempore Finch,"—being a selection of cases decided by him from 1673 to 1680, in which the Reporter himself was counsel;—but they are miserably executed, containing a defective narrative of the facts,—hardly any statement of the points made by the counsel or the authori-

* He issued several orders for regulating the practice of the Court which were generally of a very beneficial nature, but one of them, I am afraid, was prompted by the prevailing desire to vilify and to persecute Quakers. It recites that Quakers, when required to answer bills and interrogatories on oath, got others to personate them, and provides that when Quakers are to put in answers to bills, or to be examined on interrogatories, two previous days' notice shall be given, so that the plaintiff or his solicitor may attend to see them duly sworn. *Sand. Ord.* I. 348.

ties relied on,—and, without the reasons of the Judge, giving only an abstract of the Decree, with the introductory words,—"The Court ordered," or "The Court directed," or "The Court allowed." We have next an anonymous octavo volume, dated 1694, and entitled "Reports of Cases taken and adjudged in the Court of Chancery, from the 20th of Charles II. to the 1st of William and Mary," containing a number of cases by Lord Nottingham, not given in a style more satisfactory. Then there is a black-letter folio, published in 1697, under the name of "Cases argued and decreed in the High Court of Chancery from the 12th of Charles II. to the 31st, compiled from the Papers of Sir Anthony Keck,"—if possible still worse than the preceding.

There are a few decisions of Lord Nottingham, of little value, to be found in "Reports in Chancery," in "Modern Reports," in "Dickens," in "Vernon," in "Nelson," and in "Freeman;" but till the recent labours of Mr. Swanston the public had no better means of forming an opinion of his judicial powers. That gentleman, who so ably reported the later decisions of Lord Eldon, has published in the Appendix to his second and third volumes, from the folio MS. volume of Lord Nottingham's judgments in his own handwriting, a number of very important and interesting cases, which strikingly exhibit the characteristics of his judicial style and manner.

It will not be found (as might have been expected from some of the panegyrics upon him) that Lord Nottingham was much distinguished from his predecessors by the nature or extent of the particular equitable doctrines which he established. His great merit lay in the scientific method which he pursued. Instead of disposing of a case with a few random observations, like a Chairman at Quarter Sessions, we find his written judgments methodical, and logical even to formalism, reminding one of the resolution of cases of conscience by the schoolmen. His great object continued to be to redeem Equity from the disgrace of being supposed to depend upon the individual opinion or caprice of the Lord Chancellor. With this view he put a strict limit to implied trusts, by which every thing might be brought within the jurisdiction of the Court. "A general rule," said he, "to which there is no exception, is this: the law never implies, the Court never presumes a trust, but in case of absolute necessity. The reason of this rule is sacred; for, if the Chancery do once take liberty to construe a trust by implication of law, or to presume a trust unnecessarily, a way is opened to the Lord Chancellor to construe or presume any man in England out of his estate; and so at last every case in Court will become *casus pro amico*."*

Another admirable rule guided him,—never, in the absence of fraud, to interfere with contracts, or with obligations solemnly contracted. "If a man," said he, "will improvidently bind himself up by a voluntary deed, and not reserve a liberty to himself by a power of revocation, this Court will not loose the fetters he hath put upon himself, but he must lie down under his own folly."†

* Cook *v.* Fountain, 3 Swanst. 592.
† Villars *v.* Beaumont, 1 Vern. 101.

Bishop Burnet concludes his Life of Hale with a character of that great Judge, "furnished to him by one of the greatest men of the profession of the law," who was no other than Lord Nottingham, and who, after mentioning that Sir Matthew was frequently called into the Court of Chancery to advise the Lord Chancellor or Lord Keeper, says—"He looked upon Equity as a part of the common law, and one of the grounds of it; and, therefore, as near as he could, he did always reduce it to certain rules and principles, that men might study it as a science, and not think the administration of it had any thing arbitrary in it." There Lord Nottingham may be considered as having drawn his own portrait, and to have revealed the secret of his own pre-eminence.*

Roger North blames him for too much facility in hearing counsel; but, I believe, he only showed the desire, which is most shown by Judges who least want it, to have the best assistance of the bar in coming to a right conclusion. It is related that Mr. Somers, afterwards the great Lord Chancellor, when a very young man, rising after five or six seniors, said "that he was of the same side, but that so much had been already said, he had no room to add any thing, and therefore he would not take up his Lordship's time by repeating what had been so well urged by the gentlemen who went before him." "Sir," said Lord Nottingham, "pray go on. I sit in this place to hear every body. You never repeat, nor will you take up my time, and therefore I shall listen to you with pleasure."

His most important decision, while he held the Great Seal, probably was, that the obligation on constituencies to pay wages to their representatives in the House of Commons, still continues. After the dissolution of parliament, in 1681, Thomas King, Esq., late member for Harwich, presented a petition, stating "that he had served as burgesse in parliament for the borrough severall yeares, and did give his constant attendance therein; but that the said borrough had not paid him his wages, though often requested so to do." Notice being given to the corporation of Harwich, and the facts being verified, the Lord Chancelcellor ordered the writ to issue *De expensis burgensium levandis*.†

It is now ascertained that Lord Nottingham was the author of the most important and most beneficial piece of juridical legislation of which we can boast,—the famous "Statute of Frauds,"‡ the glory of which was long divided between Lord Hale and Sir Leoline Jenkins. In his

* See Preface to Hale's P. C. by Evelyn, vii. n. *h*.

† Reg. Lib. v. 1679, p. 215. I believe that this is the last order made for payment of wages. Some say that Andrew Marvell was regularly paid his wages as long as he served for Hull, but I believe he only received from his constituents yearly a complimentary cask of herrings. I know no reason, in point of law, why any member may not now insist on payment of his wages, or, if he never means to stand again for the same or any other place, why, in point of prudence, he may not insist on his rights. In most cases the proceeding would be what in the law of Scotland is called "an action of repetition," to recover back money *wrongously* received. For this point of the People's Charter—payment of wages—no new law is required.

‡ 29 Charles 2, c. 3.

judgment in the case of *Ash* v. *Abdy*, lately published from his MS. by Mr. Swanston,—commenting on the Statute of Frauds, he says, "I have some reason to know the meaning of this law; for it had its first rise from me, who brought in the bill into the Lords' House, though it afterwards received some additions and improvements from the Judges and the civilians."*

Though much famed for his oratory, both at the bar and in the senate, he never aspired to authorship beyond the printing of a few of his speeches as pamphlets soon after they were spoken,—in imitation of Shaftesbury,—looking more to the temporary impression he might make on public opinion than to permanent reputation. The manuscript reports of his judgments he wrote merely that he might be better enabled to perform his judicial duties. He inserts in this collection a few notes in the form of a journal, but without any thought of appearing to posterity as an autobiographer. His different treatises on juridical and constitutional subjects he composed entirely for his own use, without any view to publication, either during his life or after his death. That "On the King's Power of granting Pardons in Cases of Impeachment," written while proceedings were depending against Lord Danby, was published by Mr. Hargrave, in the year 1791, from a MS. in Lord Lansdowne's library, as it was supposed to throw light on some of the questions agitated during the impeachment of Mr. Hastings. He appears to have written well for one accustomed to pore over the musty folios which then formed the lawyer's library, and which were more immethodical in their arrangement, and more barbarous in their diction, as they were more recent; but he is at an immeasurable distance from the ease and elegance which now characterized the prose of Sir William Temple and of Dryden.

He was a great patron of learning. Bishop Burnet, in the preface to the History of the Reformation, pays the following compliment to his liberality and kindness:—"The Right Honourable the Lord Finch, now Lord High Chancellor of England, whose great parts and greater virtues are so conspicuous, that it were a high presumption in me to say any thing in his commendation, being in nothing more eminent than in his zeal for and care of this Church, thought it must be of some importance to have its history well digested; and therefore, *as he bore a large share of my expense*, so he took it more particularly under his care; and, under all the burdens of that high employment which he now bears, yet *found time for reading it in manuscript*, of which he must have robbed himself, since he never denies it to those who have a right to it on any public account, and *hath added such remarks and corrections as are no small part of any finishing it may be judged to have.*"†

* 3 Swanston, 664. Lord Hale and Sir Leoline Jenkins may have been two of the Judges and civilians who assisted in improving it.—See Gilb. *Rep. in Eq.* 171. North's *Life of Guilford*, i. 209, 1 Burr. 418, 5 East. 17. If Lord Nottingham drew it, he was the less qualified to construe it, the author of an act considering more what he privately intended, than the meaning he has expressed.

† Pref. to 2d Part. p. iv.

A still more striking tribute to his protection of men distinguished for their literary acquirements we have in a letter from the famous Bishop Warburton to the granddaughter of Lord Nottingham, who was married to the first Lord Mansfield, the celebrated Chief Justice of the King's Bench:—

"Madam,—You ought not to think strange of an address of this kind from a churchman to the granddaughter of that great magistrate, who, while he held the Seals for the King and constitution, besides the most exemplary attention to the proper business of his office, was elegantly ambitious to give the last polish to his country by a patronage of learning and science.

"He took early into his notice, and continued long in his protection, every great name in letters and religion, from Cudworth, who died in the reign of Charles II., to Prideaux, who lived under George I. It was the care and culture of an age, and, in spite of a dissolute and abandoned Court, he made the reign of Charles II. to be what it is now likely to be always esteemed,—our golden age of literature. The glory of bearing this relation to *so faithful a guardian of the human faculties in their nonage*, Providence, in reward of your virtues, hath doubled in a still nearer relation to one who, in his high station, may, with the same justice, be esteemed the great support of civil liberty, and is now engaged in the like generous task for the very being of a free community, which the other so successfully accomplished for that chief ornament of it, literature and science.

"But the honours you derive from others you preserve untarnished by the splendour of those you have acquired for yourself in the course of a sober and enlightened piety, which makes you an example to the rest of your sex, as the patriotic virtues of your illustrious consort will make him to the wisest of his."*

Lord Nottingham was particularly praised by his contemporaries for the conscientious impartiality with which he disposed of the church preferment in his gift as Chancellor. His anxiety on this subject is feelingly expressed in a letter to his chaplain, Dr. Sharp, afterwards Archbishop of York, whom he considered more competent than himself to exercise the duty of judicious selection. "The greatest difficulty I apprehend in my office, is the patronage of ecclesiastical preferments. God is my witness that I would not knowingly prefer an unworthy person; but as my course of life and studies has lain another way, I cannot think myself so good a judge of the merits of such suitors as you are. I therefore charge it upon your conscience as you will answer it to Almighty God, that upon every such occasion you make the best inquiry and give me the best advice you can, that I may never bestow any favour upon an undeserving man; which, if you neglect to do, the guilt will be entirely yours, and I shall save my own soul."

He was most strictly decent and moral in private life,—setting an example peculiarly useful and praiseworthy, when we consider that, to

* Nichols's Literary Anecdotes, ix. p. 626. Additions to the fifth vol. "Warburton."

show a hatred of Puritanism, and to gain favour at Court, it was thought necessary to assume vices if men had them not, and that his predecessor having bandied compliments with the Sovereign on their rival claims to profligacy, his successor was strongly and seriously advised, if he would retain his office, openly to keep a mistress.

Lord Nottingham had the misfortune to lose his wife after she had brought him fourteen children, and he continued for the rest of his days as a widower affectionately to cherish her memory.

It is related of him, that he comforted himself by taking the Great Seal to bed with him, and that thus on the 7th of February,* 1677, he saved it from the fate which then befell the mace, and afterwards the Great Seal itself, in the time of Lord Chancellor Thurlow, who had not treated it so tenderly. "About one in the morning," says Wood, "the Lord Chancellor Finch his mace was stole out of his house in Queen Street. The Seal laid under his pillow, so the thief missed it. The famous thief that did it was Thomas Sadler, soon after taken and hanged for it at Tyburn."†

He was much applauded for the dignity with which he kept up the state of his high office. Besides his town-house, in which he gave sumptuous banquets to all classes of men, he had a villa at Kensington, to which he could retire with a few chosen friends, and enjoy fresh air and repose amidst the gardens and meadows which surrounded it.‡ He was so wealthy, that after he had held the Great Seal a few years he gave up to the King the allowance of 4000*l.* a year assigned to him for the expense of his tables, and he never solicited any grant of land or bargained for any pension upon his retirement.

He seems to have been very fanciful about his health, and to have been a believer not only in the occult powers of medicine but in astrology. In the Diary of the famous Elias Ashmole, under date 23d October, 1682, we find this entry, "My Lord Chancellor Finch sent for me to cure him of his rheumatism. I dined there, but would not undertake the cure." On calculating the Lord Chancellor's nativity, I presume it was ascertained that the aspect of the stars was unfavourable. If he joined Dryden in such vagaries, need we be much astonished when we find grave characters believing in mesmerism at the present day?

Instead of attempting any general character of him myself, I shall conclude with some conflicting observations made upon him by others, which may better assist the reader to appreciate his merits and defects. "He was a formalist," says Roger North, "and took pleasure in hearing and deciding, and gave way to all kinds of motions the counsel would offer; supposing, that if he split the hairs, and with his gold scales determined reasonably on one side of the motion, justice was

* A. Wood's Life, ii. 264.

† Ath. Ox.

‡ On the site of this stands the royal palace of William III.—an enlargement of Lord Nottingham's house.

nicely done. Not imagining what torment the people endured, who were torn from the law and there (in Equity) tossed in a blanket."*

"He was a man of probity," says Bishop Burnet of his patron, now reposing at Ravenstone, "and well versed in the laws; but very ill-bred, vain, and haughty. He was long much admired for his eloquence; but it was laboured and affected, and he saw it as much despised before he died. He had no sort of knowledge in foreign affairs, and yet he loved to talk of them perpetually; by which he exposed himself to those who understood them. He thought he was bound to justify the Court in all debates in the House of Lords, which he did with the vehemence of a pleader rather than with the solemnity of a senator. He was an incorrupt Judge, and in his Court he could resist the strongest applications, even from the King himself, though he did it no where else. He was too eloquent: on the bench, in the House of Lords, and even in common conversation, that eloquence became in him ridiculous.†

Duke Wharton, out of spite to Shaftesbury, bestows upon him unmixed commendation. "He had no pimps, poets, and buffoons to administer to pleasure or flattery. His train was made up of gentlemen of figure, men of estates, barristers at law, and such as had a reputation in the profession, and were suitable and becoming so high a station. His decrees were pronounced with the greatest solemnity and gravity; no man's ever were in higher esteem, had more weight, or carry greater authority at this very day than his do. He was a great refiner, but never made use of nice distinctions to prejudice truth, or colour over what deserves the worst of names. He frequently declared he sat there to do justice, and as long as his Majesty was pleased to continue him on that seat, he would do it by the help of God impartially to all, —to the officer as well as the suitor. If the officer exceeded his just fees, or played tricks with the client, he would fine or punish him severely; at the same time, the trouble and attendance of the officer (he thought) justly entitled him to his fees. His reprimands were mixed with sweetness and severity, and so pointed, as to correct not confound the counsel. He was, indeed, difficult of access; but when once he had admittance, you found nothing from him but what was fair, just, and honourable; so that he had the happiness to send most people away with pleasure and satisfaction. His morals were as chaste as his writings, and they who have pretended to criticise the one, could never find the least fault with the other. His conversation was always with the greatest deference to decency and good manners. He was ever on his guard to parry the thrusts of witty courtiers and men of pleasantry. To figure this great and inestimable man aright, and to paint him in his true colours, and with some warmth of imagination, but still with the greatest submission to strict justice, I would seat him

* Life of Guilford, ii. 74. I should have thought that smothering between two feather beds,—or starving to death in a dungeon,—would have been a better illustration of the fate of a Chancery victim.

† Own Times, vol. ii. 28—137.

on his throne with a ray of glory about his head, his ermines without spot or blemish, his balance in his right hand, mercy on his left, splendour and brightness at his feet, and his tongue dispensing truth, goodness, virtue, and justice to mankind."*

From the author of the interesting Life of Bishop Bull we have the following warm testimony to the merits of Lord Nottingham:—"His Lordship was justly esteemed the great oracle of the law in his time, and so perfect a master in the art of speaking, that he passed for the English Cicero. Yet his great understanding, his eloquent tongue, and his titles of honour, did not give his name so lasting a lustre as that piety and virtue wherewith he adorned his high station, which is but too often starved in so rich a soil, and thriveth best in a private life."†

He is again favourably contrasted with Shaftesbury in the second part of Absalom and Achitophel:—

"Sincere was AMRI, and not only knew,
But Israel's sanctions into practice drew;
Our laws that did a boundless ocean seem,
Were coasted all and fathom'd all by him.
No Rabbin speaks like him their mystic sense,
So just, and with such charms of eloquence;
To whom the double blessing does belong,
With Moses' inspiration, Aaron's tongue."

All judicial writers, both in this country and America, worship him as the first of lawyers. Blackstone in his enthusiasm having described him as "the zealous defender of the laws and constitution," goes on truly to say he was "endued with a pervading genius that enabled him to discover and to pursue the true spirit of justice, notwithstanding the embarrassments raised by the narrow and technical notions which then prevailed in the Courts of law, and the imperfect ideas of redress which had possessed the Courts of Equity. The reason and necessities of mankind arising from the great change in property by the extension of trade, and the abolition of military tenures, co-operated in establishing his plan, and enabled him, in the course of nine years, to build a system of jurisprudence and jurisdiction upon wide and rational foundations."‡

The great Chancellor Kent, after repeating this eulogy on Lord Nottingham, adds, "We have but few reports of his decisions that are worthy of his fame. They are diffused through several works of inferior authority. It is from his time, however, that Equity became a regular and cultivated science, and the judicial decisions in Chancery are to be carefully studied."§

Finally, Professor Story, who has treated this subject more systematically than any English jurist, in giving a history of Equity, observes, "With Lord Nottingham a new era commenced. He was a person of eminent abilities and the most incorruptible integrity. He possessed a fine genius and great liberality of views, and a thorough comprehension

* True Briton, No. 69.
† 3 Bl. Com. 56.
‡ Nelson's Life of Bishop Bull, 277, 278.
§ Kent's Com. 491.

of the true principles of Equity, so that he was enabled to expand the remedial justice of the Court far beyond the aims of his predecessors. He built up a system which served as a model for succeeding judges to the Court; and hence he has been emphatically called *the Father of Equity*."*

His descendants were most distinguished members of the peerage of England. Daniel, his eldest son, not only succeeded to his titles, but, on the failure of the older branch of the Finch family, to the earldom of Winchelsea, and they are all now enjoyed by his lineal representative, the present Earl of Winchelsea and Nottingham.

The Chancellor's second son, Heneage, was bred to the law, and almost rivalled his father in the brilliancy and success of his professional career. An innate gift of eloquence was held at that time to be an hereditary talent in the blood of Finch. North, in his discourse on the study of the law, where he is expatiating on the necessity of a lawyer's endeavouring to acquire volubility of talk, after quoting the well-known saying of Serjeant Maynard, that the law is "ARS BABLATIVA," adds, "that all the learning in the world will not set a man up in bar practice without the faculty of a ready utterance, and that is acquired by habit only, unless there be a natural felicity of speech, *such as the family of the Finches is eminent by.*" This displayed itself conspicuously in [A.D. 1678.] young Heneage, who was called "silver-tongued Finch," and with general approbation was appointed Solicitor-General while his father held the Great Seal. From this post he was removed soon after the accession of James II. for his opposition to the arbitrary measures of the Court. He then joined the Whig party, was one of the principal counsel for the seven Bishops, and assisted in bringing in King William. Early in the reign of Queen Anne he was called to the Upper House as Baron Guernsey, and on the accession of George I. he was created Earl of Aylesford, the title now borne by his great-great-grandson. He completed the list of the eminent men who have made the name of Finch so conspicuous in our legal annals.

Although Charles II. survived Lord Chancellor Nottingham above two years,—as he never called another parliament, this may be the most convenient opportunity of taking a short review of the changes introduced into the law while he was upon the throne. Blackstone goes so far as to say, that "notwithstanding much practical oppression in this reign, wicked, sanguinary, and turbulent as it was, the constitution of England had arrived to its full vigour, and the true balance between liberty and prerogative was happily established by law."† Certainly great benefits were conferred upon the public by converting military tenures into common soccage,—by entirely sweeping away purveyance and pre-emption,—by abolishing the writ "*De hæretico comburendo*,"‡ which might otherwise now have been called into action against Uni-

* Story's Equity, i. 46. † 4 Bl. Com. 439. ‡ 29 Car. 2, c. 9.

tarians and other dissenters,—by the "Statute of Distributions"* which makes a most equitable disposition of personal property in case of intestacy;—by "the Statute of Frauds," admirably regulating the forms of entering into contracts and making wills;†—and above all, "the Habeas Corpus Act," the safeguard under which personal liberty has continued to be protected in England to a degree elsewhere unknown. Among the juridical improvements of the reign must likewise be enumerated the practical settlement of certain important constitutional doctrines, such as that the Peers have no original civil jurisdiction, but that they have an appellate jurisdiction from Courts of Equity as well as from Courts of law;‡ that the King's pardon cannot be pleaded in bar of a parliamentary impeachment; and that no commoner can be tried for his life except before his own peers,—an English jury. But, I believe, regret is now generally felt that some of the clauses of "the Act of Uniformity" are so rigorous and exclusive, and that "the Conventicle Act" and "the Five Mile Act" ever passed. I must likewise be permitted to deplore the passing of "the Test and Corporation Acts," and "the Act for excluding Roman Catholics from sitting in parliament," which have at last been repealed in our own time. Nor do I understand Blackstone's alleged theoretical perfection of the constitution at a time when the Judges might lawfully be removed on any occasion at the will of the Crown,—when there was no security for the meeting of parliament,—and when his own constitutional oracle, Lord Chancellor Nottingham, laid down, *ex cathedrâ*, that the King of England has a right to dispense with all laws.

At the commencement of the reign, the laudable eagerness for rational legal reform which had distinguished the Commonwealth, still prevailed, and a committee was appointed by the House of Commons, "to confer with such of the Lords, the Judges, and other persons of the long robe, who have already taken pains and made progress in perusing the statute laws, and to consider of repealing such former statute laws as they shall find necessary to be repealed, and of expedients of reducing all statute laws of one nature under such a method and head as may conduce to the more ready understanding and better execution of such laws."§ The Solicitor-General Finch, Serjeant Maynard, Prynne, and many other eminent lawyers, were members of the Committee; but the codification of the statute law is still reserved for the glory of the present or some future government. Under Charles II. political faction and religious controversy soon absorbed all attention and interest; and nothing effectual was done to correct the abuses prevailing either in the Courts of law or equity, so that the satire of the poet met with a response from the public voice, when he sang:—

"He that with injury is griev'd
And goes to law to be reliev'd,

* 22 and 23 Car. 2, c. 10.

† 29 Car. 2, c. 3. Lord Nottingham used to say, "that every line of it was worth a subsidy."—R. North's *Life of Guilford*, i. 209.

‡ Hale's Jurisdiction of the House of Lords, by Hargrave, cx. clxv. clxxix.

§ Com. Journ. viii. 631.

—the "Patriot" making up for his deficiency in knowledge by boldness of assertion and bitterness of sarcasm. The poor Lord Chancellor, leading such an uneasy life, must have very heartily concurred in the resolution to put a sudden end to this parliament; and, thankful for the respite, must joyfully have pronounced the words by [JAN. 18, 1681.] which it was dissolved, although another was summoned to meet at Oxford as a last experiment, before laying parliaments entirely aside.

On the last day of the session he assisted the King in a most unworthy manœuvre,—to steal from the table a disagreeable Bill, which both Houses had passed "for the protection of Dissenters from being prosecuted for not going to their parish church,"—so that it was defeated without the odium of a public exercise of the royal veto.* This affair might have led to very serious consequences to the Chancellor if he had been questioned for it by a patriotic House of Commons, backed by an approving public; but the House of Commons was outrageously factious—the public were disgusted with it,—and he escaped.

When the Oxford Parliament met, fortune favoured him in every thing. The Commons took up with great eagerness [MARCH 21, 1681.] the stealing of the Dissenters' Relief Bill; but they rejected with contumely all the King's proffered concessions to guard the reformed religion from the Popish successor by banishing him from the kingdom for life, and providing that the next Protestant heir should govern as Regent in his name;—and to defeat the government prosecution of their informer Fitzharris, they resolved that they would themselves impeach him for high treason before the House of Lords. This last was Shaftesbury's fatal blunder. A great many Protestant zealots still stuck by him for the "exclusion," while the more discerning members of his party now saw through his design of gaining power to himself by trying to establish the legitimacy of the Duke of Monmouth,—but nearly all were shocked by observing a capital prosecution sported with as an instrument of faction, and an attempt to try a commoner for his life before those who were not his peers.

Nottingham dexterously seized the advantage presented him, and advised the Lords to reject the impeachment, on the ground that Fitzharris, as a commoner, was entitled to be tried for this offence by a jury of commoners. We have a very imperfect report of his speech on this occasion; but he seems very successfully to have thrown odium on the House of Commons for betraying the rights of their constituents, under pretence of supporting their own privileges; and he brought forward, with prodigious effect, the precedent of the judgment on the murderers of Edward II., where it was declared in full parliament that commoners should not thereafter be tried on a capital charge by the House of Lords.†

While the Commons voted the rejection of the impeachment "a

* Ante, p. 285.

† See *ante*, p. 287. Hale's Jurisdiction of the House of Lords, c. xiv.

denial of justice," the nation on this question took part with the Lords; and the sudden dissolution of the parliament gave a decided victory to the Court.* [MARCH 28, 1681.]

Here ended Nottingham's senatorial career, the King ruling by high prerogative alone during the rest of his reign.

He had on two other occasions, which I have not mentioned, presided in the Lords as High Steward on the trial of Peers. The first was that of the Earl of Pembroke and Montgomery, for the murder of a Mr. Cony in an affray in a tavern. In a note to his MS. Reports, Nottingham has left an account of the ceremonial on this occasion, to which he seems to have attached great importance. "Being come to the Lords' House, and retired to putt on my robes, after prayers said, wee adjourned the House into Westminister Hall, and went, in the order prescribed, through the Painted Chamber, Court of Requests, and Court of Wards, into the Hall. In which procession the Duke of York and Prince Rupert,† to do honour to the King's Lieutenant (for so they called me), gave me the precedence, and suffered me to come last all the while, till the tryall was over and the white staff broken. When we came into Westminster Hall, the Court was prepared like the House of Peers in all points; with scaffolds on each side for the spectators, and a place for all the foreign ministers. So the Lords spirituall and temporall did quickly know their own places. I took my place upon the woolsack, near the cloth of state, but not directly under it, haveing first made my obeysance to the chaire, and then to the King and Queen, who satt by al *incognito*."

The Lord High Steward is reported to have delivered a preliminary address to the noble prisoner, by way of encouraging him, which seems to have been in a strange taste: "Let not the disgrace of standing as a felon at the bar too much deject you; no man's credit can fall so low but that if he bear his shame as he should do, and profit by it as he ought to do, it is in his own power to redeem his reputation. Therefore let no man despair that desires and endeavours to recover himself again; much less let the terrors of justice affright you; for though your Lordship have great cause to fear, yet whatever may be lawfully hoped for, your Lordship may expect from the Peers."

Lord Pembroke, being found guilty of manslaughter, was discharged with an admonition, that upon a second conviction for the like offence he would be liable to be hanged.‡

The other case occurred soon after, and excited considerable interest, being that of a minor peer, a schoolboy, prosecuted for the murder of a companion, with whom he had quarrelled in the palace at Whitehall. The Lord High Steward's address to encourage the accused, was again any thing but encouraging. "My Lord Cornwallis, the violation of the King's peace, in the chief sanctuary of it, his own royal palace, and in so high a manner as by the death of one of his subjects, is a matter

* 4 Parl. Hist. 1298—1339.
† Duke of Cambridge,—but he still went by his *nom de guerre*.
‡ 6 St. Tr. 1309.

—the "Patriot" making up for his deficiency in knowledge by boldness of assertion and bitterness of sarcasm. The poor Lord Chancellor, leading such an uneasy life, must have very heartily concurred in the resolution to put a sudden end to this parliament; and, thankful for the respite, must joyfully have pronounced the words by which it was dissolved, although another was summoned to meet at Oxford as a last experiment, before laying parliaments entirely aside. [JAN. 18, 1681.]

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On the last day of the session he assisted the King in a most unworthy manœuvre,—to steal from the table a disagreeable Bill, which both Houses had passed "for the protection of Dissenters from being prosecuted for not going to their parish church,"—so that it was defeated without the odium of a public exercise of the royal veto.* This affair might have led to very serious consequences to the Chancellor if he had been questioned for it by a patriotic House of Commons, backed by an approving public; but the House of Commons was outrageously factious—the public were disgusted with it,—and he escaped.

When the Oxford Parliament met, fortune favoured him in every thing. The Commons took up with great eagerness the stealing of the Dissenters' Relief Bill; but they rejected with contumely all the King's proffered concessions to guard the reformed religion from the Popish successor by banishing him from the kingdom for life, and providing that the next Protestant heir should govern as Regent in his name;—and to defeat the government prosecution of their informer Fitzharris, they resolved that they would themselves impeach him for high treason before the House of Lords. This last was Shaftesbury's fatal blunder. A great many Protestant zealots still stuck by him for the "exclusion," while the more discerning members of his party now saw through his design of gaining power to himself by trying to establish the legitimacy of the Duke of Monmouth,—but nearly all were shocked by observing a capital prosecution sported with as an instrument of faction, and an attempt to try a commoner for his life before those who were not his peers. [MARCH 21, 1681.]

Nottingham dexterously seized the advantage presented him, and advised the Lords to reject the impeachment, on the ground that Fitzharris, as a commoner, was entitled to be tried for this offence by a jury of commoners. We have a very imperfect report of his speech on this occasion; but he seems very successfully to have thrown odium on the House of Commons for betraying the rights of their constituents, under pretence of supporting their own privileges; and he brought forward, with prodigious effect, the precedent of the judgment on the murderers of Edward II., where it was declared in full parliament that commoners should not thereafter be tried on a capital charge by the House of Lords.†

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was about to fall into the water,—how he was carried to a public house and put to bed, while "the rest of the company went on for fear of losing their market;"—and how his Lordship was astonished when he awoke next morning, having forgotten every thing that had happened since his horse ran away with him. It would seem that "his Lordship" could occasionally dismiss from his mind his briefs, his fees, and his tricks, and enjoy good fellowship,—ever preserving his characteristic caution;—for Roger says, "he had strength of head to bear a great deal; and when he found that infirmity coming upon him, he used to sit smiling and say little or nothing." Once, when he was Attorney-General, having dined with the Earl of Sandwich, he went in the afternoon to the Privy Council to plead upon a petition before the King. Next day the Earl asked a Lord who had been present how Mr. Attorney behaved. "*Very well*," said the Lord. "*I thought so*," answered the Earl, "*for I sent him instructed with at least three bottles in his belly.*"*

But we must now come to more serious matters, in which, instead of the entertaining Roger, we must take for our guides State Trials, Parliamentary Debates, Law Reports, and contemporary Histories.

While North had such success on the circuit he was equally flourishing in Westminster Hall. By answering cases and preparing legal arguments for Sir Jeffrey Palmer, and by flouting at parliamentary privilege, he was still higher than ever in favour with that potential functionary. It happened that in the year 1668, after the fall of the Earl of Clarendon, a writ of error was brought in the House of Lords upon the judgment of the Court of King's Bench in the great case of "*The King* v. *Sir John Elliot, Denzil Hollis, and Others*," decided in the fifth year of the reign of Charles I.,—Denzil Hollis, now Lord Hollis, being the only defendant surviving. This, it will be recollected, was a prosecution by the King against five members of the House of Commons for what had been done in the House on the last day of the preceding session, when Sir John Finch was held in the chair while certain resolutions alleged to be seditious were voted, and one of the defendants said "that the Council and Judges had all conspired to trample under foot the liberties of the subject." They pleaded to the jurisdiction of the Court of King's Bench, "that the supposed offences were committed in parliament, and ought not to be punished or inquired of in this Court or elsewhere than in parliament." But their plea was overruled, and they were all sentenced to heavy fine and imprisonment.†

Although there had been resolutions of the House of Commons on the meeting of the Long Parliament condemning this judgment, it still stood on record, and Lord Hollis thought it was a duty he owed to his country, before he died, to have it reversed.

Sir Jeffrey Palmer, as Attorney-General, pleaded *in nullo est erratum;* but having returned his writ of summons to the House of Lords, and being in the habit of sitting there on the woolsack, as one of the

* Life, i. 90. † 3 St. Tr. 294. Lord Campbell's Speeches, p. 202.

assessors to the Peers, he could not himself argue the case as counsel at the bar. The King's Serjeants declined to do so out of respect to the House of Commons. Francis North thinking this a most favourable opportunity to make himself known at Court as an antiparliamentarian lawyer, volunteered to support the judgment, and his services were accepted. He says himself "he was satisfied he argued on the right side, and that on the record the law was for the King." Accordingly, on the appointed day, he boldly contended that, as the Information averred that the offences were committed *against the peace*, as privilege of parliament does not extend to offences in breach of the peace, as they had not been punished in the parliament in which they were committed, and as no subsequent parliament could take notice of them, they were properly cognizable in a Court of common law. The judgment was reversed,* —but North's fortune was made. The Duke of York was pleased to inquire "who that young gentleman was who had argued so well?" Being told that "he was the younger son of the Lord North, and, what was rare among young lawyers at that time, of loyal principles," his Royal Highness undertook to encourage him by getting the King to appoint him one of his Majesty's counsel. North was much gratified by receiving a message to this effect, but was alarmed lest the Lord Keeper Bridgeman, who by his place was to superintend preferments in the law, might conceive a grudge against him for this interference with his patronage. The Lord Keeper acquitted him of all blame, wished him joy, and, with peculiar civility, desired him to take his place within the bar.

The job, however, seems very much to have shocked the grave Benchers of the Middle Temple, or Frank had offended them by the insolent airs which he assumed, for they refused to call him to the Bench, "alleging, that if young men by favour so preferred came up straight to the Bench, and by their precedence topt the rest of the ancient Benchers, it might in time destroy the government of the society." He went round to the Judges complaining of this as a slight to the King. "The very next day in Westminster Hall, when any of the Benchers appeared at the Courts, they received reprimands from the Judges for their insolence, as if a person whom his Majesty had thought fit to make one of his counsel extraordinary, was not worthy to come into their company, and so dismissed them unheard, with declaration, that until they had done their duty in calling Mr. North to their Bench, they must not expect to be heard as counsel in his Majesty's Courts." This was English; and that evening they conformed and were reinstated.†

Things went on very smoothly with him now till the death of Sir Jeffrey Palmer, when Sir Heneage Finch being promoted to be Attorney-General, the Solicitor's place was vacant.‡ [MAY, 1670.] North being the only King's counsel, and having been long employed

* 3 St. Tr. 333.

† Life, i. 65, 66. He was the only King's counsel then at the bar, and there were very few till after the Revolution.

‡ Dug. Or. Jur. 117.

in Crown business, had a fair claim to succeed, and he was warmly supported by the Lord Keeper as well as the new Attorney-General, who was desirous of having him for a colleague; but the Duke of Buckingham, at this time considered Prime Minister, preferred Sir William Jones, who was North's great competitor in the King's Bench, and over whose head he had been put when he received his silk gown.

To terminate the difference they were both set aside, and the office of Solicitor-General was given to Sir Edward Turner, Speaker of the House of Commons, who held it for a twelvemonth; at the end of which he was made Chief Baron of the Exchequer, in the room of Sir Matthew Hale, promoted to be Chief Justice of the Common Pleas.

Buckingham's influence had now greatly declined, and North was [MAY 20, 1671] made Solicitor-General without difficulty, Jones being solaced with a silk gown, and the promise of further promotion on the next vacancy.*

CHAPTER XCV.

CONTINUATION OF THE LIFE OF LORD GUILFORD TILL HIS APPOINTMENT AS LORD KEEPER.

THE CABAL was now in its full ascendency; and as the leaders did [A.D. 1671.] not take any inferior members of the government into their councils, and contrived to prevent the meeting of parliament for nearly two years, the new Solicitor had only to attend to his profession. Of course he gave up the circuit, and he set the example, generally followed for 150 years, of making the Court of Chancery his principal place of practice, on being promoted to be a law officer of the Crown,—henceforth going to other Courts only in cases in which the Crown was concerned, or which were of very great magnitude. To keep up his law,—when he could be spared from the Court of Chancery, he stepped across the Hall and seated himself in the Court of King's Bench, "with his note book in his hand, reporting as the students about the Court did, aud during the whole time of his practice every Christmas he read over 'Littleton's Tenures.'" He had hitherto practised conveyancing to a considerable extent; but he now turned over this business to Siderfin the Reporter, whom he appointed to serve him in the capacity of "*Devil*," as he himself had served Sir Jeffrey Palmer. He was on very decent terms with Sir Heneage Finch, who had much assisted his promotion; but he showed his characteristic cunning by an expedient he adopted to get the largest share of the patent business. Then, as now, all patents of dignity belong exclusively to the Attorney-

* Or. Jur. 117.

General; but the warrants for all other patents might be carried either to the Attorney or Solicitor. North, with much dexterity, took into his employment a clerk of Sir Jeffrey Palmer who was reputed to have a magazine of the best precedents, and who had great interest among the attorneys, whereby many patents came to his chambers which otherwise would have gone to the Attorney-General's.

But if he was eager to get money, he spent it freely. He was now appointed "Autumn Reader" of the Middle Temple, and though the festivity was not honoured with the presence of royalty, like Finch's in the Inner Temple, it was conducted sumptuously, and cost him above 1000*l*. He took for his subject, "The Statute of Fines," which he treated very learnedly, and the arguers against him, the best lawyers of the Society, did their part very stoutly. On the "Grand Day" all the King's chief ministers attended, and the profusion of the best provisions and wine led to such debauchery, disorder, tumult, and waste, that this was the last public Reading in the Inns of Court, the lectures being discontinued and the banqueting commuted for a fine.

I must not pass over his loves, although they were not very romantic or chivalrous. He was desirous of being married—among other reasons because he was tired of dining in the Hall and eating "a costelet and salad at Chastelins in the evening with a friend,"—and he wished to enjoy the pleasures of domestic life. One would have thought that the younger son of a Peer—of great reputation at the bar,—Solicitor-General at thirty-one, and rising to the highest offices in the law,—might have had no difficulty in matching to his mind,—but he met with various rebuffs and disappointments. Above all, he required wealth, which it seems was not then so easily to be obtained without the display of a great rent roll. He first addressed the daughter of an old usurer in Gray's Inn, who speedily put an end to the suit by asking him "what estate his father intended to settle upon him for present maintenance, jointure, and provision for children?" He could not satisfy this requisition by an "Abstract" of his profitable "rood of ground in Westminster Hall." He then paid court to a coquettish young widow; but after showing him some favour, she jilted him for a jolly knight of good estate. The next proposition was made to him by a city alderman, the father of many daughters, who, it was given out, were to have each a portion of 6000*l*. North dined with the alderman, and liked one of them very much, but coming to treat, the fortune shrunk to 5000*l*. He immediately took his leave. The alderman ran after him, and offered him to boot 500*l*. on the birth of the first child, but he would not bate a farthing of the 6000*l*.

At last his mother found him a match to his mind in the Lady Frances Pope, one of the three daughters and co-heirs of the Earl of Down, who lived at Wroxton, in Oxfordshire, with fortunes of 14,000*l*. apiece. We are surprised to find that, with all his circuit and Westminster Hall earnings, he was obliged to borrow 600*l*. from a friend before he could compass 6000*l*. to be settled upon her. He then ventured down with grand equipage and attendance, and, in less than a

fortnight, obtained the young lady's consent, and the writings being sealed, the lovers were happily married. The feasting and jollities in the country lasted three weeks, and Mr. Solicitor, heartily tired of them, was very impatient to get back to his briefs. However, he seems always to have treated his wife, while she lived, with all due tenderness. He took a house in Chancéry Lane, near Serjeant's Inn, and acquired huge glory by constructing a drain for the use of the neighbourhood,—a refinement never before heard of in that quarter. This was the happiest period of his life.

In the beginning of 1673 the meeting of parliament could be deferred no longer, and it was considered necessary that the Solicitor-General should have a seat in the House of Commons. Lord Chancellor Shaftesbury was now to try his scheme of issuing writs for the election of members without the warrant of the Speaker. It happened that there was a vacancy for Lynn, in Norfolk, by the death of Sir Robert Stuart, and North having great family and personal interest in the town and neighbourhood, became a candidate to succeed him. After giving a handsome treat to the electors, he was returned, without opposition,—but not without grumbling on their part, that there was no competitor to make the money fly. Some of them testily exclaimed, that "Hobson's choice was no choice." But, alas for Mr. Solicitor! before he was allowed to take his seat, all the elections under these writs were declared void by the House of Commons,* and he had still the sea to drink. To the great joy of Lynn, a second candidate was at last obtained in Sir Simon Taylor, a wealthy wine-merchant in the town.† Butts of sherry were opened in the market-place, gin was as plentiful as water, every spigot in the town ran beer without intermission, and the greatest exertions were used to induce the electors to vote for their townsman. However, the government was not to be disgraced by the rejection of their law officer, and he was so considerably at the head of the poll, that Sir Simon Taylor signed the indenture of his return. There were great hopes that, on account of the corrupt practices to which his friends had resorted, he would have been thrown out upon a petition; but, according to the notions of election law which then prevailed, the step which his opponent had taken precluded the attempt, and he was allowed quietly to keep his seat.

He remained member for Lynn till he was made Chief Justice of the Common Pleas, in January, 1675; but I can hardly find any trace of his ever having spoken in the House of Commons. During two short sessions, in 1673, he was Solicitor-General, and things were in such confusion from Lord Shaftesbury being in opposition while he

* 4 Parl. Hist. 507. *Ante*, p. 258.

† I can testify, from having witnessed it, that the scene of the greatest exultation and joy in this world, is the procession of the "third man" entering a borough during a canvass for the election of members of parliament. Those who do not mean to support him, and know that he has no chance of success, equally rejoice—in the consciousness of their own increased importance;—and from his worship the Mayor down to the beggar in the street, all expect to derive some gratification from the coming contest.

remained Chancellor, that the members of the government were quite at a loss what part to take in the lower House, and the subordinates seem to have remained silent.

Shaftesbury was at last turned out, and the Great Seal was given to Sir Heneage Finch, who, being asked by the King to name his successor, said, "who should succeed the Captain but the Lieutenant?" and North became Attorney-General.* [Nov. 12, 1673.] He had for his colleague as solicitor his old rival, Sir William Jones, who seems to have been a considerable man,—who afterwards had the virtue voluntarily to give up office that he might join the popular party,—and who, if not cut off by an early death, would probably have acted the part of Lord Somers at the Revolution, and left a great name in history. The account we have of the demeanour of North and Jones to each other is creditable to them, if not to the general courtesy of the bar in their time: "although in the course of their practice they were often chosen on purpose to resist each other, especially in hot factious causes, yet they never clashed in words, or made any show of private animosity, *as commonly in such cases is done with great noise and indecency*. But they conversed, visited, and entertained familiarly, though less frequent after the times grew hot, and preferment of the one made a greater distance between them."†

Parliament met in a few weeks after North's promotion. In those good old times when, according to Blackstone, the English constitution was "theoretically perfect," the appointment to an office of profit under the Crown did not vacate a seat in the House of Commons,‡—but a notice was given to question North's right to sit longer as representative for Lynn, on the ground that, as Attorney-General, he had a writ of summons to the House of Lords, and was bound to give his attendance there. [Jan. 7, 1674.] He diligently prepared to meet this objection, and had got up all the precedents and authorities, but as these were decidedly in his favour the notice was suffered to drop. It is rather unlucky for his parliamentary fame, that the motion against him was not brought forward; for he must have defended himself; he probably would have done it ably; the House had always listened favourably to the answer to a personal attack,—and after a successful maiden speech he might have become a distinguished debater. He still remained mute. We are told that "little or nothing of the King's business in the House of Commons leaned upon him, because Mr. Secretary Coventry was there who managed for the Court."§ The skill, readiness, and influence of this leader of the House of Commons seems to have superseded the efforts of all the

* Or. Jur. 118.

† Examen, 514.

‡ In a note upon this sentence of my work by some laborious editor in a future age, it will be said, "The author here talks very feelingly; for I find that when he himself was promoted from being Solicitor to be Attorney General in the year 1834, he lost his seat for Dudley, and was kept out of parliament nearly a whole session till re-elected for the city of Edinburgh."

§ Henry Coventry, youngest son of Lord Chancellor Coventry.

other members of the government, who were reminded by him of the useful maxim, "*Least said, is soonest mended.*" He is celebrated as "an ancient member who had the nice step of the House, and withal was wonderfully witty," and we are assured (which could not be truly said respecting all his successors who may have merited the same panegyric for talent and dexterity), that "he had never said any thing in the House which afterwards proved a lie, and had that credit, that whatever he affirmed, the House believed." North once or twice spoke a few words, "in resolving the fallacies of the country party," but did not venture beyond an opinion upon a point of law which incidentally arose.

"He could not attend the House constantly, but took the liberty of pursuing his practice in Westminster Hall."* There he was easily the first; and the quantity of business which he got through in Chancery ("his home") and the other Courts where he went *special* seems to have been enormous. His mode of preparation was (like Lord Erskine's) to have a consultation in the evening before reading his brief, when "he was informed of the history of the cause, and where the pinch was." Next morning at four he was called by a trusty boy, who never failed, winter or summer, to come into his chamber at that hour,† and by the sitting of the Court he had gone through his brief, and was ready to do ample justice to his clients.

Fees now flowed in upon him so fast that he hardly knew how to dispose of them. He seems to have taken them from his clients with his own hand. At one time he had a fancy, for his health, to wear a sort of skullcaps. He now routed out three of these, which he placed on the table before him, and into these he distributed the cash as it was paid to him. "One had the gold, another the crowns and half-crowns, and another the smaller money." When these vessels were full, they were committed to his brother Roger, who told out the pieces, and put them into bags, which he carried to Child's, the goldsmith, at Temple-Bar.‡

[A.D. 1674.] But still Mr. Attorney was dissatisfied with his position. He could not but be mortified by his insignificance in the House of Commons. The country party there was rapidly gaining strength, and although it was not then usual for the Crown to turn out its law officers on a change of ministers, he began to be very much frightened by threats of impeachment uttered against all who were instrumental in executing the measures of the government. Shaftesbury was in furious opposition. While only at the head of a small minority in the House of Lords, the House of Commons was more and more

* Life, i. 176. The hours then kept must have been very inconvenient for lawyers in parliament, as all the Courts and both Houses met at eight in the morning, and sat till noon.

† This early rising rendered it necessary for him to take "a short turn in the other world after dinner."

‡ Life, i. 171. Roger assures us he did not purloin any part of the treasure,—for which he takes infinite credit to himself.

under his influence. North was exceedingly timid, always conjuring up imaginary dangers, and exaggerating such as he had to encounter. He now exceedingly longed to lay his head on "the cushion of the Common Pleas," instead of running the risk of its being laid on the block on Tower Hill.

Vaughan, the Chief Justice of that Court died, and his wishes were accomplished,—notwithstanding some intrigues to elevate Sir William Jones or Sir William Montague.* [JAN. 25, 1675.] When it came to the pinch, North was rather shocked to think of the sacrifice of profit which he was making, "for the Attorney's place was (with his practice) near 7000*l.* *per annum*,† and the cushion of the Common Pleas not above 4000*l.* But accepting, he accounted himself enfranchised from the Court brigues and attendances at the price of the difference."‡

North held the office of Chief Justice of the Common Pleas nearly eight years, which may be divided into two periods:—1st, From his appointment till the formation of the council of thirty, on the recommendation of Sir William Temple in the year 1679;—2dly, From thence till he received the Great Seal in the end of the year 1682. During the former he mixed little in politics, and devoting himself to his juridical duties, he discharged them creditably.

At this time, and for long after, the emoluments of the Judges in Westminster Hall depended chiefly upon fees, und there was a great competition between the different Courts for business. The King's Bench, originally instituted for criminal proceedings, had, by a dexterous use of their writ of "*latitat*," tricked§ the Common Pleas of almost all civil actions; and when the new Chief Justice took his seat, he found his Court a desert. There was hardly sufficient business to countenance his coming every day to Westminster Hall, while the Serjeants and officers were repining and starving.‖ But he was soon up with the King's Bench, by a new and more dexterous use of the "*capias*," the ancient writ of that Court, applying it to all personal actions. "After this process came into common use, it is scarce to be conceived how the Court revived and flourished, being, instead of vacation in term, rather term in vacation, so large was the increase of trials by *nisi prius* out of the Court, as also of motions and pleas in the Court."¶ Hence Anstey sings in the Pleader's Guide,—

"If haply John-a-Stile provoke
The legal fight 'gainst John-a-Noke,

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* Or. Jurid. 118.

† The official fees seem to have fallen off greatly since Bacon's time, which probably arose from the abolition of the military tenures and the Court of Wards.

‡ Life, i. 183.

§ It was called "Trickum in lege."

‖ The Court of C. P., in point of business, seems then to have been as badly off as I remember the Exchequer,—when it was said that the Barons "met punctually at half-past eleven, and rose half an hour before twelve;" and that if, having a stray motion, you wished to take a shot at them, "they were like a covey of partridges in November, you could never find them *sitting*."

¶ Life, i. 193.

The 'LATITAT' the foe besieges,
And baffles him in BANCO REGIS;
Skilled with *ac etiams* to perplex,
And foil with *bill of Middlesex*,
While 'CAPIAS' is rejoic'd to seize,
And plunder him in Common Pleas."*

The Serjeants were for some time most grateful to the Chief Justice, and hailed him as their deliverer from the usurpation of the King's Bench; but before long he got into very bad odour with them for allowing his brother Roger, not of the order of the Coif, to make certain motions, which they said belonged exclusively to them. To show their resentment, they one day refused to bring forward any business. The Chief Justice, in great indignation, adjourned the Court, saying, that the following day they would hear common barristers, or attorneys, or the suitors themselves plead, in spite of the monopoly of the Serjeants, that there might not be a failure of justice. "This was like thunder to the Serjeants, and they fell to quarrelling one with another about being the cause of this great evil they had brought upon themselves. In the afternoon they attended the Chief and the other Judges of the Court, and in great humility owned their fault and begged pardon, and they would be careful not to give the like offence for the future. The Chief told them that the affront was in public and in the face of the Court, and they must make their recognition there next morning in such a manner as the greatness of their offence demanded, and then they should hear what the Court would say to them. Accordingly they did, and the Chief first, and then the rest in order, gave them a formal chiding with acrimony enough,—all which with dejected countenances they were bound to hear. When this discipline was over, the Chief pointed to one to move, which he did more like one crying than speaking; and so ended the comedy, as it was acted in Westminster Hall, called '*The Dumb Day.*'"†

At this time a Judge, when appointed, selected a circuit, to which he steadily adhered, till another, which he preferred, became vacant. Chief Justice North for several years "rode the Western;" and in his charges to Juries, as well as in his conversation with the country gentlemen, he strongly inculcated the most slavish Church-and-King doctrines, insomuch that the Cavaliers called him "*Deliciæ Occidentis*," or, "the Darling of the West."

Though careful to avoid all fanatics, he was once completely taken in by a Mr. Duke, who had a very handsome house in Devonshire. This gentleman asked the Chief Justice and his brother Judge to pass a night with him, and they, believing him to be perfectly orthodox, accepted the invitation. But instead of getting a priest to read prayers before their Lordships, "he himself got behind the table in his hall and read a chapter, and then gave them a long-winded prayer, after the Presbyterian way. The Judges took it very ill, but did not think fit to affront him in his own house. Next day when they came early

* Pl. G. Lect. v. † Life, i. 195—198. Serjeant's case, by Manning.

in the morning to Exeter, all the news was that the Judges had been at a conventicle, and the Grand Jury intended to present them and all their retinue for it; and much merriment was made upon the subject."* As they were above the allowed number, and not of the family of the master of the house, they were all certainly liable to be prosecuted under "the Conventicle Act," which the High Church party then prized so dearly.

The Chief Justice afterwards went the Northern Circuit, attended by his brother Roger, who gives a most entertaining account of his travels, and who seems to have thought the natives of Northumberland and Cumberland as distant, as little known, and as barbarous, as we should now think the Esquimaux or the aborigines of New Zealand.

Till the Popish Plot broke out, Chief Justice North had no political trials before him; and the only cases which gave him much anxiety were charges of witchcraft. He does not appear, like Chief Justice Hale, to have been a believer in the black art; but, with his characteristic timidity, he was ashamed to combat the popular prejudice, lest the countrymen should cry, "This Judge hath no religion,—he doth not believe witches." Therefore he avoided trying witches himself as much as possible, and turned them over to his brother Judge, Mr. Justice Raymond, whom he allowed to hang them. He was once forced to try a wizard; but the fraud of a young girl, whom the prisoner was supposed to have enchanted and made to spit pins, was so clearly exposed by the witnesses, that the Chief Justice had the boldness to direct an acquittal.†

The Popish Plot he treated as he did witchcraft. He disbelieved it from the beginning, but was afraid openly to express a doubt of its reality. He thought it might be exposed by the press, and he got a man to publish an anonymous pamphlet against it, to which he contributed; but sitting along with Chief Justice Scroggs, who presided at the trial of those charged with being implicated in it, he never attempted to restrain this "butcher's son and butcher" from slaughtering the victims.‡

So on the trial of Lord Stafford, though he privately affected severely to condemn the proceeding, he would not save Lord Nottingham, the High Steward, from the disgrace of assisting in that murder; and he dryly gave his own opinion, that two witnesses were not necessary to each overt act of treason.§

* Life, i. 226. † Ibid. 255.

‡ "At the Old Bailey," says his apologist, "where the Oatesian storms were most impetuous, the Lord Chief Justice of the King's Bench steered the vessel, and the other Judges had little or no share in the conduct, whereby his Lordship (North) in the main, was rather an observer than an actor in these proceedings, to which hung the issues of life and death. And nothing can qualify the silence but the inconceivable fury and rage of the community, gentle and simple at that time, and the consequences of an open opposition to the chief, whose part it was to act as he did, demanding no assistance from any of them."—*Life*, i. 302. See St. Tr. vol. vi. vii. viii.

§ 7 St. Tr. 1527.

We have still more flagrant proof of his baseness on the trial of Reading, prosecuted by order of the House of Commons for trying to suppress evidence of the plot. North himself now presided, and having procured a conviction,—in sentencing the defendant to fine, imprisonment, and pillory, he said,—"I will tell you your offence is so great, and hath such a relation to that which the whole nation is concerned in, because it was an attempt to baffle the evidence of that conspiracy, which, if it had not been, by the mercy of God, detected, God knows what might have befallen us all by this time."*

We now come to present North on the political stage, where he continued to act a very conspicuous and discreditable part [A.D. 1679.] down to the time of his death. In the year 1679, when the King adopted his new plan of government by a Council of thirty, of which Shaftesbury was made President, and into which Lord Russell and several of the popular leaders were introduced, it was thought fit to balance them by some determined ultra-royalists; and the Lord Chief Justice of the Common Pleas, who had acquired himself the reputation of being the most eminent of that class, was selected,—although he had not hitherto been a Privy Councillor. At first he seldom openly gave any opinion in Council,—but he secretly engaged in the intrigues which ended in the abrupt prorogation and dissolution of the parliament, in the dismissal of Shaftesbnry, and the resignation of Lord Russell and the Whigs. The scheme of government was then altered, and a Cabinet, consisting of a small number of Privy Councillors, was formed, North being one of them. To his opinion on legal and constitutional questions, the government was now disposed to show more respect than to that of Lord Chancellor Nottingham.

There being much talk against the Court in the London coffee-houses, it was wished to suppress them by proclamation; and our Chief Justice being consulted on the subject, gave this response,—that "although retailing of coffee may, under certain circumstances, be an innocent trade, yet as it is used at present in the nature of a common assembly to discourse of matters of state, news, and great persons, it becomes unlawful; and as the coffee-houses are nurseries of idleness and pragmaticalness, and hinder the consumption of our native provisions, they may be treated as common nuisances." Accordingly a proclamation was issued for shutting up all coffee-houses, and forbidding the sale of coffee in the metropolis; but this caused such a general murmur, not only among politicians and idlers, but among the industrious classes connected with foreign and colonial trade, that it was speedily recalled.†

The meeting of the new parliament summoned in the end of 1679 having been repeatedly postponed, there arose the opposite factions of "Petitioners" and "Abhorrers,"—the former *petitioning* the King that parliament might be speedily assembled for the redress of grievances, and the latter, in their addresses to the King, expressing their *abhorrence*

* 7 St. Tr. 310. † Examen, 140. Life, i. 298.

of such seditious sentiments. The "Petitioners," however, were much more numerous and active, and a Council was called to consider how their proceedings might be stopped or punished. Our Chief Justice recommended a proclamation, which the King approved of, and ordered the Attorney-General, Sir Creswell Levinz, to draw. Mr. Attorney, alarmed by considering how he might be questioned for such an act on the meeting of parliament, said, "I do not well understand what my Lord Chief Justice means, and I humbly pray of your Majesty that his Lordship may himself draw the proclamation."—*King.* "My Lord, I think then you must draw this proclamation."—*Chief Justice.* "Sire, it is the office of your Majesty's Attorney-General to prepare all royal proclamations, and it is not proper for any one else to do it. I beg that your Majesty's affairs may go in their due course; but if in this matter Mr. Attorney doubts any thing, and will give himself the trouble to call upon me, I will give him the best assistance I can."

Sir Creswell having written on a sheet of paper the formal commencement and conclusion of a royal proclamation, [Dec. 12, 1679.] carried it to the Chief Justice, who filled up the blank with a *recital* that, "for spurious ends and purposes relating to the public, persons were going about to collect and procure the subscriptions of multitudes of his Majesty's subjects to petitions to his Majesty, —which proceedings were contrary to the known laws of this realm, and ought not to go unpunished,"—and a *mandate* to all his Majesty's loving subjects of what rank or degree soever, "that they presume not to agitate or promote any such subscriptions, nor in any wise join in any petition in that manner to be preferred to his Majesty, upon pain of the utmost rigour of the law, and that all magistrates and other officers should take effectual care that all such offenders against the laws be prosecuted and punished according to their demerits."*

Parliament at last met, and strong measures were taken against the "Abhorrers," who had obstructed the right of petitioning. [Oct. 21, 1680.] An inquiry was instituted respecting the Proclamation. Sir Creswell Levinz was placed at the bar, and asked by whose advice or assistance he had prepared it. He several times refused to answer; but being hard pressed, and afraid of commitment to the Tower, he named the Lord Chief Justice North,—against whom there had been a strong suspicion, but no proof. A hot debate arose, which ended in the Resolution, "That the evidence this day given to this House against Sir Francis North, Chief Justice of the Common Pleas, is sufficient ground for this House to proceed upon an impeachment against him for high crimes and misdemeanours."†

He was a good deal alarmed by the vote of impeachment, but it raised him still higher in favour at Court. Next day, presiding in the House of Lords as Speaker, in the absence of the Lord Chancellor, and seeming very much dejected, King Charles (according to his manner) "came and clapped himself down close by him on the woolsack, and, '*My*

* Examen, 547. † Com. Journ. Nov. 25, 1679. 4 Parl. Hist. 1229.

Lord,' said he, '*be of good comfort; I will never forsake my friends, as my father did.*'" His Majesty, without waiting for a reply, then walked off to another part of the House.

A committee was appointed to draw up the articles of impeachment against the Chief Justice; but before they made any report, this parliament too was dissolved. [JAN. 18, 1681.]

Soon after Charles's last parliament was summoned, North was obliged to set off upon the spring circuit; and notwithstanding his best efforts to finish the business rapidly, he could not arrive at Oxford till the two Houses had assembled, and had entered into the controversy respecting the trial of Fitzharris. He lodged in Trinity College, as his lady was one of the co-heirs of the founder, and there he kept a table for the well-affected members of either House,—being "allowed to battle in the butteries."

As Lord Nottingham was able to be present and to preside in the House of Lords, North had no opportunity for any public appearance; but we need not doubt that he was very active in private intrigues, and that he warmly supported the opportune doctrine, however much he might inwardly condemn it, that a Commoner might not be tried for his life by the House of Lords. He was of the small junto to whom was intrusted the secret of immediate dissolution. The moment the deed was done, he set off for London, pretending to be afraid of what he called "the positive armament against the King, which manifestly showed itself at Oxford." [MARCH 28, 1681.]

As soon as the Cabinet met at Whitehall, North advised the issuing of a Declaration to justify the dissolution of the three last parliaments which had met respectively at Westminster and at Oxford,—and himself drew an elaborate one, which was adopted. This state paper certainly puts the popular party in the wrong, upon the "exclusion question" and other matters, with considerable dexterity, and it was supposed to have contributed greatly to the reaction going on in favour of the government. [APRIL, 1681.]

So far his conduct was legitimate, and in the fair exercise of his functions as a Privy Councillor; but I am sorry to say that he now sullied his ermine by a flagrant disregard of his duties as a Judge. The grand jury for the city of London having very properly thrown out the bill of indictment against Stephen College, "the Protestant joiner," it was resolved to try him at Oxford; and for this purpose a Special Commission was issued,—at the head of which was placed Lord Chief Justice North. Burnet says mildly, "North's behaviour in that whole matter was such that, probably, if he had lived to see an impeaching parliament, he might have felt the ill effects of it."* After perusing the trial, I must say, that his misconduct upon it was most atrocious. The prisoner, being a violent enemy to Popery, had attended the city members to Oxford as one of their guard, with "No Popery" flags and cockades,—using strong language against the Papists and their supporters, but without any

* O. T. i. 504.

thought of using force. Yet the Chief Justice was determined that he should be found guilty of compassing and imagining the King's death, and levying war against him in his realm. College's papers, which he was to use in his defence, were forcibly taken from him, on the ground that they had been written by some other persons, who gave him hints what he was to say. They were in reality prepared by his legal advisers, Mr. Aaron Smith and Mr. West.* The prisoner was checked and browbeaten as often as he put a question or made an observation. His defence was much more able than could have been expected from a person in his station of life;—but, of course, he was convicted. The Chief Justice, in passing sentence, observed, "Look you, Mr. College; because you say you are innocent, it is necessary for me to say something in vindication of the verdict, which I think the Court were all well satisfied with. I thought it was a case, that, as you made your own defence, small proof would serve the turn to make any one believe you guilty. For, as you defend yourself by pretending to be a Protestant, I did wonder, I must confess, when you called so many witnesses to your religion and reputation, that none of them gave an account that they saw you receive the Sacrament within these many years, or any of them particularly had seen you at church in many years, or what kind of Protestant you were. But crying aloud against the Papists,—it was proved here who you called Papists. You had the boldness to say the King was a Papist, the Bishops were Papists, and the Church of England were Papists. If these be the Papists you cry out against, what kind of Protestant you are I know not,—I am sure you can be no good one. How it came into your head, that were but a private man, to go to guard the Parliament, I much wonder. Suppose all men of your condition should have gone to have guarded the Parliament, what an assembly had there been! And though you say you are no man of quality, nor likely to do any thing upon the King's guards or the King's person, yet if all of your quality had gone upon the same design, what ill consequences might have followed? We see what has been done by Massienello, a mean man in another country,—what by Wat Tyler and Jack Straw in this kingdom." College asked him to fix the day of his death, but he answered that that depended on the King; adding, in a tone of great humanity, "that he should have due notice of it to prepare, by repenting of his crimes."† College's innocence was so manifest, that even Hume, eager to palliate all the atrocities of this reign, says, "that his whole conduct and demeanour prove him to have been governed by an honest but indiscreet zeal for his country and his religion." On the 31st of August, 1681, the sentence, with all its savage barbarities, was carried into execution. "Sir Francis North," observes Roger Coke, "was a man cut out, to all intents and purposes, for such a work."‡ [A.D. 1681.]

He was next called upon to assist at the immolation of a nobler vic-

* Examen, 589. Roger North was himself one of the counsel for the Crown.

† 8 St. Tr. 550—723.

‡ Detection, ii. 368.

tim, who escaped from the horns of the altar. Shaftesbury had been for some time very careful never to open his mouth on politics out of the city of London and county of Middlesex, and during the Oxford parliament had touched on no public topic except in the House of Lords. It was resolved at all hazards to bring him to trial; but this could only be done by an indictment to be found at the Old Bailey. There did North attend when the indictment was to be preferred, and resolutely assist Lord Chief Justice Pemberton in perverting the law, by examining the witnesses in open Court, and by trying to intimidate and mislead the Grand Jury; but he was punished by being present at the shout which lasted an hour when "*Ignoramus*" was returned.*

He next zealously lent himself to the scheme of the Court for upsetting the municipal privileges of the city of London, and of obtaining sheriffs for London and Middlesex, who would return juries at the will of the government. The Lord Mayor having been gained over, and the stratagem devised of creating a sheriff by the Lord Mayor drinking to him, instead of by the election of his fellow-citizens,—the difficulty was to find any freeman of fair character who would incur all the odium and risk of being so introduced to the shrievalty. It so happened that at that time there returned to England a brother of the Chief Justice, Mr. Dudley, afterwards Sir Dudley, North, who was free of the city from having been apprenticed there to a merchant, and who had amassed considerable wealth by a long residence in Turkey. It being suggested at Court that this was the very man for the Sheriff,† "the King very much approved of the person, but was very dubious whether the Chief Justice, with his much caution and wisdom, would advise his brother to stand in a litigious post. But yet he resolved to try; and one day he spoke to Sir Francis with a world of tenderness, and desired to know [A. D. 1682.] *if it would be too much to ask his brother Dudley to hold Sheriff on my Lord Mayor's drinking?*" The wily Chief Justice immediately saw the advantage this proposal might bring to the whole family, and returned a favourable answer. "For matter of title," says Roger, "he thought there was more squeak than wool, for whatever people thought was at the bottom, if a citizen be called upon an office by the government of the city and obeys, where is the crime? But then such a terrible fear was artificially raised up in the city as if this service was the greatest hazard in the world." Sir Francis gently broke the matter to his brother, saying, "that there was an opportunity which preferred itself whereby he might make a fortune if he wanted it, and much enlarge what he had, besides great reputation to be gained, which would make him all the days of his life very considerable, laying open the case of the Lord Mayor's right very clear and plain, against which in common sense there was no reply." Dudley, however, made many objections, and talked of the terrible expense to

* Ante, p. 293.

† It was said, by way of jest, on the other side, that he was only selected by the Court to answer their purposes, as in Turkey he had often been before the Kadi, and he had become well acquainted with the use of the bow-string.

which he should be exposed. The Chief Justice urged that if he served, the obligation was so transcendent, that there could be no employment by commission from the Crown which would not fall to his share, "and as for the charge," said he,—"here, brother, take 1000*l.* to help make good your account, and if you never have an opportunity by pensions or employments to reimburse you and me, I will lose my share; else I shall be content to receive this 1000*l.* out of one half of your pensions when they come in, and otherwise not at all."* The merchant yielded; and under this pure bargain, proposed by the Judge before whom the validity of the appointment might come to be decided,—when his health was given by the Lord Mayor as Sheriff of London and Middlesex, he agreed to accept the office.

But the old sheriffs insisted on holding a Common Hall for the election of their successors, according to ancient usage, on Midsummer day,—when Lord Chief Justice North [JUNE 24, 1682.] had the extreme meanness, at the King's request, to go into the city and take post in a house near Guildhall, belonging to Sir George Jeffreys, "who had no small share in the conduct of this affair, to the end that if any incident required immediate advice, or if the spirits of the Lord Mayor should droop, which in outward appearance were but faint, there might be a ready recourse." It is true, the opposite faction had the Lord Grey de Werke and other leaders from the west end of the town, to advise and countenance them; but this could be no excuse for a Judge so degrading himself. The poll going for the popular candidates, the Lord Mayor, by Chief Justice North's advice, under pretence of a riot, attempted to adjourn the election; but the Sheriffs required that the polling should continue, and declared Papillon and Dubois duly elected.†

This causing great consternation at Whitehall, a council was called, to which the Lord Mayor and Aldermen were summoned. Lord Chief Justice North, by the King's command, addressed them, saying, "That the proceedings of the Sheriffs at the Common Hall after the adjournment were not only utterly null and void, but the persons were guilty of an audacious riot and contempt of lawful authority, for which by due course of law they would be severely punished; but in the mean time it was the Lord Mayor's duty, and his Majesty's pleasure, that they should go back to the city and summon the Common Hall, and make election of Sheriffs for the year ensuing." The Lord Mayor, having been told that the courtiers would bamboozle him and leave him in the lurch,—when North had concluded, said, "My Lord, will your Lordship be pleased to give me this under your hand?" The King and all the councillors were much tickled to see the wily Chief Justice thus nailed, "expecting some turn of wit to fetch himself off, and thinking to have sport in seeing how woodenly he would excuse himself." But to their utter astonishment, for once in his life Francis North was bold and straightforward, and cheating them all, he answered, without any hesi-

* Life, ii. 16—20.

† Life, ii. 20.

tation, "Yes, and you shall have it presently." Then seizing a pen, he wrote, "I am of opinion, that it is in the Lord Mayor's power to call, adjourn, and dissolve the Common Hall at his pleasure, and that all acts done there, as of the Common Hall, during such adjournment, are mere nullities, and have no legal effect." This he signed, and handed to the Lord Mayor, who then promised obedience.*

Accordingly, another Common Hall was called, at which it was pretended that Sir Dudley North and Rich were elected, and [Nov. 1682.] they were actually installed in the office of Sheriff. By the contrivance of Lord Chief Justice North, the office of Lord Mayor for the ensuing year was likewise filled by a thorough passive-obedience tool of the Court. Gould, the liberal candidate, had a majority of legal votes on the poll, but under a pretended scrutiny, Pritchard was declared duly elected, and Sir John More, the renegade Mayor, willingly transferred to him the insignia of Chief Magistrate, so that the King had now the city authorities completely at his devotion. Shaftesbury fled to Holland; and it was for the Court to determine when the blow should be struck against the popular leaders who remained.

Such were the services of Lord Chief Justice North, which all plainly saw would ere long be rewarded by higher promotion. The health of Lord Nottingham, the Chancellor, was rapidly declining, and the Court had already designated his successor. Lord Craven, famous for wishing to appear intimate with rising men,—in the circle at Whitehall now seized Lord Chief Justice North by the arm and whispered in his ear;—and the foreign ambassadors so distinctly saw the shadow of the coming event, that they treated him with as great respect as if he had been prime minister, "and when any of them looked towards him and thought he perceived it, they very formally bowed."

We are told, that in many things North acted as "Co-Chancellor" with Nottingham; and for the first time the office of Chancellor seems to have been like that of Sheriff of Middlesex, one in its nature, but filled by two officers of equal authority. It is said, that "the *aspirant* dealt with all imaginable kindness and candour to the *declinant*, and that never were predecessor and successor such cordial friends to each other, and in every respect mutually assistant as those two were."†

Such hopes on an expected vacancy of the Great Seal are sometimes disappointed, but here there were very solid reasons for entertaining them. While the Lord Chancellor was languishing, the Chief Justice being at Windsor, the King plainly intimated to him, that when the fatal event, which must be shortly looked for, had taken place, the Great Seal would be put into his hands. He modestly represented himself to his Majesty as unfit for the place, and affected by all his art and skill to decline it. In truth, he really wished to convey to the King's mind the impression that he did not desire it, although he had been working so foully for it,—as he knew it would be pressed upon him, there being

* Life, ii. 23. † Life, ii. 64, 65.

no competitor so knowing and so pliant, and he had an important stipulation to make for a pension before he would accept it. When he came back to London, and confidentially mentioned what had passed between him and the King, he pretended to be annoyed, and said, "that if the Seal were offered to him he was determined to refuse it;" but it is quite clear that he was highly gratified to see himself so near the great object of his ambition, and that his only anxiety now was, that he might drive a good bargain when he should consent to give up "the cushion of the Common Pleas."

Lord Nottingham having died about four o'clock in the afternoon of Monday, the 18th of December, 1682,* the Great Seal was carried next morning, from his house in Great Queen Street, to the King at Windsor. The following day his Majesty brought it with him to Whitehall, and in the evening sent for the Lord Chief Justice of the Common Pleas, to offer it to him. When North arrived he found Lord Rochester, the Treasurer, and several other ministers, closeted with Charles. At that time, there being no civil list, and generally no distinction between the funds to be applied to the King's private expenses and to the public service; and the Exchequer being now very empty, and the resolution being taken never more to summon a parliament for supplies, it was considered an object that the Keeper of the Great Seal should be contented with the fees of his office, without any allowance or pension from the Crown. Charles himself was careless about such matters, but the Treasurer had inculcated upon him the importance of this piece of economy. As soon as North entered, his Majesty offered him the Seal, and the ministers began to congratulate the new Lord Keeper; but, with many acknowledgments for his Majesty's gracious intentions, he begged leave to suggest the necessity, for his Majesty's honour, that a pension should be assigned to him, as it had been to his predecessor, for otherwise the dignity of this high office could not be supported. Rochester interposed, pointing out the necessity, in times like these, for all his Majesty's servants to be ready to make some sacrifices; that the emoluments of the Great Seal were considerable; and that it would be more becoming to trust to his Majesty's bounty than to seek to drive a hard bargain with him. But Sir George Jeffreys being yet only a bustling city officer, who could not with any decency have been put at the head of the law; the Attorney and Solicitor-General not being considered men of mark or likelihood; Sir Harbottle Grimston, the Master of the Rolls, being at death's door, and no other common-law Judge besides himself being produceable,—the little gentleman was firm, and positively declared that he would not touch the Great Seal without a pension. After much haggling, a compromise took place, by which he was to have 2000*l.* a year instead of the 4000*l.* a year assigned to his predecessor. The King then lifted up the purse containing the Seal, and, putting it into his hand, said, "Here, my Lord, take it; you will find it heavy." "Thus," says Roger [DEC. 20, 1682.]

* 1 Vernon, 115.

North, "his Majesty acted the *prophet* as well as the *King;* for, shortly before his Lordship's death, he declared that, *since he had the Seal, he had not enjoyed one easy and contented minute.*"*

CHAPTER XCVI.

CONTINUATION OF THE LIFE OF LORD GUILFORD TILL THE DEATH OF CHARLES II.

When the new Lord Keeper came home, at night, from Whitehall [Dec. 20, 1682.] to his house in Chancery Lane, bringing the Great Seal with him, and attended by the officers of the Court of Chancery,—instead of appearing much gratified, as was expected by his brother and his friends, who were waiting to welcome him, he was in a great rage,—disappointed that he had not been able to make a better bargain, and, perhaps, a little mortified that he had only the title of "Lord Keeper" instead of the more sounding one of "Lord Chancellor." Recriminating on those with whom he had been so keenly acting the chapman, he exclaimed, "To be haggled with about a pension,† as at the purchase of a horse or an ox! After I had declared that I would not accept without a pension, to think I was so frivolous as to insist and desist all in a moment! As if I were to be wheedled and charmed by their insignificant tropes! To think me worthy of so great a trust, and withal so little and mean as to endure such usage! It is disobliging, inconsistent, and insufferable. What have I done that may give them cause to think me of so poor a spirit as to be thus trifled with?"‡ It might have been answered, that, though the King and the courtiers made use of him for their own ends, they had seen his actions, understood his character, and had no great respect for him. Till Jeffreys was a little further advanced, they could not run the risk of breaking with him;—but then he was subjected to all sorts of mortifications and insults.

The day after his appointment "he kept a private seal for writs at [Dec. 21, 1682.] his house in Chancery Lane,"§ and on the first day of the following Hilary term he took his place in the Court of Chancery. By this time he was in possession of his predecessor's house in Great Queen Street, Lincoln's Inn Fields,—and he [Jan. 23, 1683.] had a grand procession from thence to Westminster Hall, attended by the Duke of Ormond, the Earls of Craven and Rochester, the great officers of State, and the Judges. He took the oaths, the Master of the Rolls holding the book. He does not

* Life, ii. 68, 69. Crown. Off. Min. fol. 108.

† By this word "pension," I conceive we are to understand *salary* while the Lord Keeper was in office, and not, as might be supposed, an allowance on his retirement.

‡ Life, i. 415.

§ 1 Vernon, 115.

appear to have delivered any inaugural address. The attendant Lords stayed and heard a motion or two, and then departed, leaving the Lord Keeper in Court.*

They might have been well amused if they had remained. For the crooked purposes of the government, with a view to the disfranchising of the City of London by the *quo warranto* depending against it, Pemberton was this day to be removed from being Chief Justice of the King's Bench to be Chief Justice of the Common Pleas, and Edmund Saunders was to be at once raised from wearing a stuff gown at the bar to be Chief Justice of the King's Bench. This keen, but unscrupulous lawyer, was previously to be made a Serjeant that he might be qualified to be a Judge, and, coming into the Court of Chancery, he presented the Lord Keeper with a ring for himself, and another for the King, inscribed with the courtly motto, "Principi sic placuit." The Lord Keeper then accompanied him into the Court where he was to preside, called him to the bench, and made him a speech on the duties of his office. The ceremonies of the day were concluded by his Lordship afterwards going to his old Court, the Common Pleas, and there swearing in Pemberton as his successor, whom he congratulated upon "the ease with dignity" which he was now to enjoy.

Parasites and preferment-hunters crowded the levee of the new Lord Keeper. He was immediately waited upon by the courtly Evelyn, who discovered in him a thousand good qualities.†

In the midst of these blandishments he applied himself with laudable diligence to the discharge of his judicial duties. He declared that he was shocked by many abuses in the Court of Chancery, and he found fault with the manner in which his two predecessors, Bridgeman and Nottingham, had allowed the practice of the Court to lead to delay and expense. It was properly understood at the bar and on the bench, that nothing done in Lord Shaftesbury's time should ever be referred to as a precedent, on account of his rashness and ignorance. But it was even the fashion to talk of Bridgeman as "a splitter of hairs," and Nottingham as "a formalist,"‡ and to lament how justice was obstructed by the slow process, the motions, the exemptions, the injunctions, and the re-hearings which they had encouraged.

North's conduct as a law reformer was extremely characteristic. He talked much of issuing a new set of "Rules and Orders" to remedy all abuses, but he was afraid "that it would give so great alarm to the bar and officers, with the solicitors, as would make them confederate and demur, and, by making a tumult and disturbance, endeavour to hinder the doing any thing of that kind which they would apprehend to

* Cr. Off. Min. fol. 105.

† "Sir F. North being made Lord Keeper on the death of the Earl of Nottingham, the Lord Chancellor, I went to congratulate him. He is a most knowing, learned, and ingenious person; and, besides having an excellent person, of an ingenuous and sweet disposition, very skilful in music, painting, the new philosophy, and political studies."—*Mem.* i. 513.

‡ This is like the slighting manner in which Lord Mansfield was spoken of in the time of Lord Kenyon.

be very prejudicial to their interests."* Then, when he wished to simplify the practice and to speed causes to a hearing and final decree, he considered that he was not only to regard the suitors, but that "there was a justice due as well to the Crown, which had advantage growing by the disposition of places, profits, by process of all sorts, as also the Judges and their servants, and counsel at the bar, and solicitors, who were all in possession of their advantages, and by public encouragement to spend their youth to make them fit for them, and had no other means generally to provide for themselves, and their families, and had a right to their reasonable profits, if not strictly by law, yet through long connivance."†

He pretended to have an intention to abolish the usage of selling the places of the Masters in Chancery, which were in the disposal of the Lord Chancellor or Lord Keeper, as "the Court had not so much power to coerce exorbitances or to control their profits, when they bought their places, as if they were conferred gratis, for, upon the least rumour of a reform, they cry out *Purchase!—Valuable consideration!*" But he very prudently doubted how far he could effectually cure the evil if he were to dispose of the offices without taking money for them. He also reflected how indifferently such a generous act would be accepted by the public. He thought, judging by his own standard of right, that "it would have been termed either vanity or folly, and perhaps both; and all the skilful had reputed no better of him, and so, instead of having the action approved, he had been rendered contemptible for it, as one that did not understand his own advantages; if selling such places was inconvenient, constant usage that established it must answer."‡ So, after due deliberation, his Lordship thought it the most becoming course "*stare super antiquas vias*"—to follow the steps of his predecessors, and to dispose of those places for a price, as they had done before him.

But he retrenched "Heraldry," or motions for giving precedence to causes, "which had become so common that Sir John Churchill, a famous Chancery practitioner, used to take as much as 28*l.* in walking from Lincoln's Inn to the Middle Temple Hall, where the sittings were held out of term, with breviates respecting the booking and retarding of hearings." He abolished the rule that an injunction for want of answer must continue after the coming in of the answer, if exceptions were taken to it for insufficiency. He likewise checked vexatious exceptions to Masters' Reports; and he is said to have been very particular in granting re-hearings. He very laudably dictated the material parts of his decrees; and he encouraged the registrars to come to him privately in case of any difficulty, to avoid the frequent disputes in Court about minutes after the decree has been pronounced.

Such being the amount of his reforms, I think we must say that his alleged merit consists chiefly in the profession of good intentions; that

* Life, ii. 76. † Ibid. ii. 83. ‡ Life, ii. 132, 133.

he allowed the practice of the Court to remain pretty much as he found it; and that if he saw and approved what was right, he followed what was wrong,—aggravating his errors by disregarding the strong dictates of his conscience.

Nevertheless, he applied himself very assiduously to the business of his Court,—which, from his experience at the bar, and from his having often sat for his predecessor, was quite familiar to him;—and he seems to have disposed of it satisfactorily. He was not led into temptation by having to decide in equity any political case; and no serious charge was preferred against him of bribery or undue influence.* Till the meeting of parliament in the reign of James, and the failure of his health, he prevented the accumulation of arrears; and, upon the whole, as an Equity Judge, he is to be praised rather than censured.

I wish as much could be said of his political conduct while he held the Great Seal. He may have *wished* "to bring the King to rule wholly by law, and to do nothing which, by any reasonable construction, might argue the contrary;" but for this purpose he would make feeble efforts, and no sacrifice; and all the measures of the Court, however profligate, when resolved upon, he strenuously assisted in carrying into execution.

The ministers who now bore sway, and who were on several points opposed to each other, were Halifax, Sunderland, and Rochester. The Duke of York restored to the office of Lord High Admiral and to the Privy Council, in direct violation of the "Test Act," had so much influence, that it was said that "to spite those who wished to prevent him from reigning at the King's death, he was permitted to reign during the King's life!" The Duchess of Portsmouth was likewise at the head of a party at Court, although Mrs. Gwin, her Protestant rival, did not interfere with politics. With none of these would the Lord Keeper combine. His policy was to study the peculiar humours of the King—to do whatever would be most agreeable personally to him—to pass for "the King's friend"—and to be "solus cum solo."†

Charles, although aware of his cunning and his selfishness, was well pleased with the slavish doctrines he laid down, and with the devoted zeal he expressed for the royal prerogative; and till Jeffreys's superior vigour, dexterity, and power of pleasing gained the ascendency, usually treated him with decent consideration. Every Sunday morning when the King was in town, the Lord Keeper went with the other great officers to Whitehall, to wait on the King to chapel. "That was usually a grand assembly of the Court; and the great men had opportunity to speak in discourse to the King as he gave them occasion, of which his Majesty was no niggard; and very excellent things said there, on the one side and on the other, were an high regale to such as

* In the short notice of him in a Collection of Lives published in 1712, there is an allusion to "an odd story of Chancery suit between the Duke of N—— and Sir P—— H——, and of some gold plate in a box," i. 177, but no particulars are given, and it is entitled to no weight.

† Life, ii. 163, 165, 169.

had the advantage to stand within hearing."* A Cabinet Council was held almost every Sunday evening. When the Court was at Windsor, this made Sunday a travelling day. The Lord Keeper had a lodging provided for him there in the Dean's house. For the ease of attendance, the King would come from Windsor to hold a public Council at Hampton Court. There, and at Whitehall, the Lord Keeper had a lodging in the palace. If at any time he wished to see the King privately, he went directly to the royal bedchamber, and took possession of it. "In that part of the Court were always attendants who straight found where the King was, and told him my Lord Keeper was there; and the King knowing he had something to say to him, never failed to come to him, and that without any delay."†

He never would give any opinion on foreign affairs, nor attend a committee of Council summoned specially to consider them, professing himself, for want of a fit education and study, incompetent to judge at all of these matters, and declaring, like a true courtier, that "King Charles II. understood foreign affairs better than all his councils and councillors put together."‡ But he regularly attended all other Cabinet meetings, and when there was any business of a judicial nature to be done at the Council table he always presided there, "the Lord President not having the art of examining into and developing cases of intricacy."§

The first of these in which he had to display his powers, was the disfranchisement of the City of London. Saunders, counsel in the *quo warranto*, having been appointed Chief Justice, [June 12, 1683.] to decide in favour of the sufficiency of the pleadings which he himself had drawn, the opinion of the Court of King's Bench had been pronounced for the Crown, "that all the City charters were forfeited," because a toll had been demanded alleged to be illegal, and a petition had been presented alleged to be seditious,—notwithstanding the argument that these could not be considered the acts of the *Ens Legis*, called the Corporation, which was to be punished for them, and that if the offences of extortion and libel had been committed, they should be visited only upon the *individuals* who were guilty of them. Formal judgment was not yet entered on the record,—to give an opportunity to the Mayor, Aldermen, and Citizens to make their submission, and to accept terms which might henceforth annihilate their privileges and make them the slaves of the government. They accordingly did prepare a petition to the King, imploring his princely compassion and grace,—which they presented to him at a Council held at Windsor on the 18th of June, 1683. The petition being read, they were ordered to withdraw, and when they were again called in, the Lord Keeper thus addressed them, disclosing somewhat indiscreetly the real motives for the *Quo Warranto*:—"My Lord Mayor, I am by the King's command to tell you

* Life, ii. 168.
† Ibid. ii. 178.
‡ Ibid. ii. 181.
§ Ibid. ii. 169.

that he hath considered the humble petition of the City of London, where so many of the present magistrates and other eminent citizens are of undoubted loyalty and affection to his service; that for their sakes his Majesty will show the City all the favour they can reasonably desire. It was very long before his Majesty took resolutions to question their charter; it was not the seditious discourses of the coffee houses, the treasonable pamphlets and libels daily published and dispersed thence into all parts of the kingdom, the outrageous tumults in the streets, nor the affronts to his Courts of Justice could provoke him to it. His Majesty had patience until disorders were grown to that height, that nothing less seemed to be designed than a ruin to the government both of Church and State." After pointing out the mischief of having factious magistrates, he adds,—"It was high time to put a stop to this growing evil. This made it necessary for his Majesty to inquire into the abuses of franchises, that it might be in his power to make a regulation sufficient to restore the City to its former good government." He then stated the regulations to which they were required to assent,—among which were,—"That no Lord Mayor, Sheriff, or other officer should be appointed without the King's consent; that the King might cashier them at his pleasure; that if the King disapproved of the Sheriffs elected, he might appoint others by his own authority; and that the King should appoint all magistrates in the city by his Commission, instead of their being elected as hitherto." In conclusion he said,—"The city ought to look upon this as a great condescension on his Majesty's part; it being in the nature of a reservation of a small part of what is already in his power by the judgment. My Lord Mayor, it is his Majesty's pleasure that you return to the city and consult the Common Council, that he may speedily know your resolutions thereupon, and accordingly give his directions. That you may see the King is in earnest, and the matter is not capable of delay, I am commanded to let you know he hath given order to his Attorney-General to enter up judgment on Saturday next, unless you prevent it by your compliance in all these particulars."*

The citizens refused to comply with these terms, and judgment was entered up. Thus, on the most frivolous pretexts, and by a scandalous perversion of the forms of law, was the City of London robbed of the free institutions which it had enjoyed, and under which it had flourished for many ages. The proceeding was less appalling to the public than the trial and execution of eminent patriots, but was a more dangerous blow to civil liberty. London remained disfranchised, and governed by the agents of the Crown, during the rest of this reign, and till the expected invasion of the Prince of Orange near the conclusion of the next, —when, too late, an offer was made to restore its charters, with all its ancient privileges. Immediately after the Revolution, they were irrevocably confirmed by act of parliament.†

* 8 St. Tr. 1039—1350.

† 2 W. & M. sess. i. c. 8.

The Lord Keeper's conduct in this affair gave such high satisfaction at Court, that, as a reward for it, he was raised to the peerage by the title of Baron Guilford. His brother says that he did not seek the elevation from vanity, but that he might be protected against the attacks which might hereafter be made upon him in the House of Commons. He obtained it on the recommendation of the Duke of York, who overlooked his dislike of Popery in respect of his steady hatred to public liberty.*

To show his gratitude, the new Peer directed similar proceedings to be commenced against many other corporations,—which ended in the forfeiture or surrender of the charters of most of the towns in England in which the liberal party had enjoyed an ascendency.

Gilbert Burnet, about this time appointed Preacher at the Rolls, thought he had secured a protector in the Lord Keeper; but as soon as this Whig divine had incurred the displeasure of the Court, his Lordship wrote to the Master of the Rolls that the King considered the chapel of the Rolls as one of his own chapels, and that Dr. Burnet must be dismissed as one disaffected to the government. In consequence he was obliged to go beyond seas, and to remain in exile, till he returned with King William.†

Soon after followed the disgraceful trials for high treason, which arose out of the discovery of the Rye-House plot. [July, 1683.] The Lord Keeper did not preside at these; but having directed them,—superintending the general administration of justice, and specially bound to see that the convictions had been obtained on legal evidence,—he is deeply responsible for the blood that was shed. He must have known that if, in point of law, the witnesses made out a case to be submitted to the jury against Lord Russell, that virtuous nobleman was really prosecuted for his support of the Exclusion Bill; and he must have seen that against Algernon Sydney no case had been made out to be submitted to the jury, as there was only one witness that swore to any thing which could be construed into an overt act of treason, and the attempt to supply the defect by a MS. containing a speculative essay on government, which was found in his study, and had been written many years before—was futile and flagitious.‡ Yet did he sign the death-warrants of both these men,—whose names have been honoured, while his has been execrated in all succeeding times.

It is edifying and consolatory to think that he was outdone by his own arts, and that the rest of his career was attended by almost constant mortification, humiliation, and wretchedness. Saunders enjoyed the office of Chief Justice of the King's Bench only for a few months, being carried off by an apoplexy soon after the decision of the great London *quo warranto* cause.§ An intrigue was immediately set on foot to procure the appointment for Jeffreys, who had more than ever recommended himself to the Court by his zeal on the trial of Lord Russell, in which

* Life, ii. 234. † Own Times, ii. 269. ‡ 8 St. Tr. 578, 818.

§ Although this decision was his, he was too ill to be present when it was pronounced by the senior puisne Judge.

he had eclipsed the Attorney and Solicitor-General,—and he was greatly wanted to preside at the trial of Sydney, against whom the case was known to be so slender, but who was particularly obnoxious on account of his late quarrel with the Duke of York, and his sworn enmity to despotism. The pretensions of Jeffreys were supported by Sunderland, probably out of ill will to the Lord Keeper, who had intuitively shown a great jealousy of the new favourite. But the proposal produced great opposition and bickerings among different sections of courtiers. The Lord Keeper of course resisted it *totis viribus*, representing to the King that the office, according to ancient and salutary usage, ought to be offered to the Attorney and Solicitor-General, who had been irregularly passed over on the appointment of the late Chief Justice, to gain an object of such magnitude as the forfeiture of the city charters; that Saunders was a man of immense learning, which countenanced *his* sudden elevation; but that *Jeffreys*, though gifted with a fluency of speech, was known to be unequal to so high an office; and that the whole profession of the law, and the public, would condemn an act so arbitrary and capricious. Charles was, or pretended to be, impressed by these arguments, which he repeated to Sunderland, and the office was kept vacant for three months after the death of Saunders.* But on the 29th of September, the Lord Keeper had the mortification to put the Great Seal to the writ constituting Jeffreys "Chief Justice of England," and on the first day of the following Michaelmas term to make a speech, publicly congratulating him on his rise to the supreme seat of criminal justice—so well merited by his learning, his abilities, and his services.

[SEPT. 29, 1683.]

What was worse, the new Lord Chief Justice was not only sworn a Privy Councillor, but, in a few weeks, was admitted into the Cabinet, where he, from the first, set himself to oppose the opinions, and to discredit the reputation, of him who, he knew, had opposed his appointment, and whom (his ambition being still unsatiated) he was resolved, in due time, to supplant.

Jeffreys began with interfering very offensively in the appointment of puisne Judges,—which of right belonged to the Lord Keeper. At first he was contented with the reputation of power in this department. The Lord Keeper having announced privately to Serjeant Bedingfield that he was to be made a Judge, Jeffreys worked upon him, by the threat of stopping his promotion, to make him publish to the world that he owed it exclusively to the Chief Justice of the King's Bench.†

He next resolved to make a Judge, by his own authority, of a man almost as worthless as himself. This was Sir Robert Wright, who never had any law, who had spent his patrimony in debauchery, and who, being in great distress, had lately sworn a false affidavit to enable him to commit a fraud upon his own mortgagee. There being a vacancy on the bench, the Lord Keeper waited on his Majesty to "take his pleasure" on the appointment of a fit person, whom he named.—*King.* "My Lord, what think

* See Sunderland's Letter, Clar. Corr. i. 82.

† Life, ii. 93.

you of Serjeant Wright? Why may not he be the man?"—*Guilford.* "Because, Sir, I know him too well, and he is the most unfit person in England to be made a Judge."—*King.* "Then it must not be." Upon this they parted: but the next time that the Lord Keeper was in the royal presence, the King again said, "Why may not Wright be a Judge? He is strongly recommended to me; but I would have a due respect paid to you, and I would not make him without your concurrence. Is it possible, my Lord?"—*Guilford.* "Sir, the making of a Judge is your Majesty's choice, and not my pleasure. I am bound to put the Seal as I am commanded, whatever the person may be. It is for your Majesty to determine, and me, your servant, to obey.* But I must do my duty by informing your Majesty of the truth respecting this man, whom I personally know to be a dunce and no lawyer; who is not worth a groat, having spent his estate by debauched living; who is without honesty, having been guilty of wilful perjury to gain the borrowing of a sum of money. And now, Sir, I have done my duty to your Majesty, and am ready to obey your Majesty's commands in case it be your pleasure that this man shall be a Judge."—*King.* "My Lord, I thank you." (*Exit* King.)—Next day there came a warrant for the appointment of "our right trusty and right well beloved Sir Robert Wright to be one of the Justices of our Court before us."

Jeffreys was not satisfied with his triumph without proclaiming it to all Westminster Hall. "Being there that same morning, while the Court of Chancery was sitting, he beckoned to Wright to come to him, and giving him a slap on the shoulder, and whispering in his ear, he flung him off, holding out his arms towards the Lord Keeper. This was a public declaration *that in spite of that man above there, Wright should be a Judge.* His Lordship saw all this, as it was intended he should, and it caused him some melancholy." But he found it convenient to pocket the insult; he put the Great Seal to Wright's patent, and assisted at the ceremony of his installation. There is no trace of the Lord Keeper's speech on this occasion, so that we do not know in what terms he complimented the new Judge on his profound skill in the law, his spotless integrity, and his universal fitness to adorn the judgment-seat.†

When heated with liquor, Jeffreys could not now conceal his contempt for the Lord Keeper, even in the King's presence. It is related that, upon the hearing of a matter before the Council, arising out of a controversy for jurisdiction between two sets of magistrates, Guilford proposed some sort of compromise between them, when the Lord Chief Justice, "flaming drunk," came from the lower to the upper end of the board, and "talking and staring like a madman," bitterly inveighed

* Till the Revolution, and even for some time after, the King's personal command was considered a justification to every functionary.

† This wretch became so great a favourite in the next reign, that Herbert was turned out of the office of Chief Justice of the King's Bench to make way for him, and he presided at the trial of the seven Bishops, thereby greatly accelerating and furthering the Revolution.—12 *St. Tr.* 189.

against "Trimmers," and told the King "he had *Trimmers* in his Court, and he never would be easy till all the *Trimmers* were sent about their business." "The Lord Keeper knowing that these darts were aimed at him,* moved the King that the whole business should be referred to the Lord Chief Justice, and that he should make a report to his Majesty in Council of what should be fit to be done." This was ordered, and Guilford seems to have entertained a hope that Jeffreys, from the state of intoxication he was in, would entirely forget the reference, and so might fall into disgrace.†

But the most serious difference between them in Charles's time was on the return of Jeffreys from the northern circuit in the autumn of 1684,—when, backed by the Duke of York, he had a deliberate purpose of immediately grasping the Great Seal. At a Cabinet Council, held on a Sunday evening, he stood up, and addressing the King while he held in his hands the rolls of the recusants in the north of England: "Sir," said he, "I have a business to lay before your Majesty which I took notice of in the north, and which well deserves your Majesty's royal commiseration. It is the case of numberless members of your good subjects that are imprisoned for recusancy: I have the list of them here to justify what I say. They are so [SEPT. 1684.] many that the great jails cannot hold them without their lying one upon another." After tropes and figures about "rotting and stinking in prison," he concluded with a motion to his Majesty "that he would, by his pardon, discharge all the convictions for recusancy, and thereby restore air and liberty to these poor men." This was a deep-laid scheme, for besides pleasing the royal brothers, one of whom was a secret, and the other an avowed Papist, he expected that Guilford must either be turned out for refusing to put the Great Seal to the pardon, or that he would make himself most obnoxious to the public, and afterwards to parliament, by compliance. A general silence prevailed, and the expectation was that Halifax, or Rochester, who were strong Protestants, would have stoutly objected. The Lord Keeper alarmed lest the motion should be carried, and seeing the dilemma to which he might be reduced, plucked up courage, and said, "Sir, I humbly entreat your Majesty that my Lord Chief Justice may declare whether all the persons named in these rolls are actually in prison or not?"—*Chief Justice.* "No fair man could suspect my meaning to be that all these are actual prisoners; for all the jails in England would not hold them. But if they are not in prison, their case is little better; for they lie under sentence of commitment, and are obnoxious to be taken up by every peevish sheriff or magistrate, and are made to redeem their liberty with gross fees, which is a cruel oppression to them and their families."—

* It is curious that Roger gravely states, that "he was dropped from the Tory list and turned Trimmer."—*Life*, i. 404.

† Life, ii. 179. It should be recollected that, at this time, the Council met in the afternoon, between two and three—dinner having taken place soon after twelve, and a little elevation from wine was not more discreditable at that hour, than in our own time between eleven and twelve o'clock at night.

Lord Keeper. "Sir, I beg your Majesty will consider what little reason there is to grant such a general pardon at this time. For they are not all Roman Catholics that lie under sentence of recusancy, but sectaries of all kinds and denominations; perhaps as many, or more, who are all professed enemies to your Majesty and your government in church and state. They are a turbulent people, and always stirring up sedition. What will they not do when your Majesty gives them a discharge at once? Is it not better that your enemies should live under some disadvantages, and be obnoxious to your Majesty's pleasure, so that, if they are turbulent or troublesome, you may inflict the penalties of the law upon them? If there be any Roman Catholics whom you wish to favour, grant to them a particular and express pardon, but do not by a universal measure set your enemies as well as your friends at ease. The ill uses that would be made of such a step to the prejudice of your Majesty's interests and affairs are obvious and endless."* The King was much struck with these observations, urged with a boldness so unusual in the Lord Keeper. The other Lords wondered, and the motion was dropped.

The Lord Keeper, not without reason, boasted of this as the most brilliant passage of his life. When he came home at night, he broke out in exclamations: "What can be their meaning? Are they all stark mad?" And before he went to bed, as a memorial of his exploit, he wrote in his almanack, opposite to the day of the month, "Motion *cui solus obstiti.*" [SEPT. 24, 1684.]

By such an extraordinary exhibition of courage, to which he was driven by the instinct of self-preservation, he escaped the peril which Jeffreys had planned for him, and he retained the Great Seal till the King's death.

In the morning of Monday, the 2d of February, 1685, he was sent for to Whitehall, by a messenger announcing that his Majesty had had an apoplectic seizure. According to the ancient custom and supposed law when the sovereign is dangerously distempered,—the Privy Council was immediately assembled; and the Lord Keeper examined the King's physicians.† "Their discourse ran upon indefinites—what they observed, their method intended, and success hoped. He said to them, *that these matters were little satisfactory to the Council, unless they would declare, in the main, what they judged of the King's case;*

* Life, ii. 150, 153, 334.

† Lord Coke lays down, that upon such an occasion there ought to be a warrant by advice of the Privy Council, as in 32 H. 8, to certain physicians and surgeons named, authorising them to administer to the royal patient "potiones, syrupos, confectiones, laxitivas medicinas, clysteria, suppositoria, capitis purgea, capitis rasuram, fomentationes, embrocationes, emplastra," &c.; still that no medicine should be given to the King but by the advice of his Council; that no physic should be administered except that which is set down in writing, and that it is not to be prepared by any apothecary, but by the surgeons named in the warrant.—4 *Inst.* 251. These were the precautions of times when no eminent person died suddenly without suspicion of poison. Even Charles II. was at first said to have been cut off to make way for a Popish successor, although, when the truth came out, it appeared that he had himself been reconciled to the Roman Catholic church.

whether his Majesty was like to recover or not? But they would never be brought to that; *all lay in hopes.*"*

With short intervals the Council continued to sit day and night. After a time, the physicians came into the council chamber, smiling, and saying they had good news, for the King had a fever.—*Lord Keeper.* "Gentlemen what do you mean? Can any thing be worse?" —*First Physician.* "Now we know what to do."—*Lord Keeper.* "What is that?"—*Second Physician.* "To give him the cortex." The exhibition of Jesuits' bark was sanctioned by the Council, but proved fatal,—and being continued while the poor King grew weaker and weaker, at the end of four days he expired. [Feb. 6, 1685.] The Lord Keeper and the Council were kept in ignorance of the fact, that Chiffinch (accustomed to be employed on royal errands of a different sort) had been sent for a Roman Catholic priest to receive his confession and administer the sacraments to him, when he had declined the spiritual assistance of a Bishop of the Church of England.

CHAPTER XCVII.

CONCLUSION OF THE LIFE OF LORD GUILFORD.

The Council was still sitting when the news was brought that Charles was no more. After a short interval, James, who, leaving the deathbed of his brother, had decently engaged in a devotional exercise in his own closet, entered the apartment in which the Councillors were assembled, and all kneeling down, they saluted him as their sovereign. [Feb. 6, 1685.] When he had seated himself in the chair of state, and delivered his declaration, which, with very gracious expressions, smacked of the arbitrary principles so soon acted upon, Lord Guilford surrendered the Great Seal into his hands, and again received it from him with the former title of Lord Keeper.† James would, no doubt, have been much better pleased to have transferred it to Jeffreys; but it was his policy, at the commencement of his reign, to make no change in the administration, and he desired all present to retain the several charges which they held under his deceased brother, —assuring them that he earnestly wished to imitate the good and gracious sovereign whose loss they deplored.

Jeffreys, though continued a Member of the Cabinet, was probably a good deal disappointed, and he resolved to leave nothing undone to mortify the man who stood between him and his object, and to strike him down as soon as possible.

* Life, ii. 184.

† On the 10th of Feb., before proceeding to business, he took the oaths, standing in his place in the Court of Chancery, the Master of the Rolls holding the book.—*Cr. Off. Min.* fol. 117.

The first question upon which James consulted the Council was respe ing the levying of the duties of Customs and Excise, which had be granted by parliament only during the life of the late King. The Lo Keeper intimating a clear conviction that parliament would continue t grant as from the demise of the Crown, recommended a Proclamation quiring that the duties should be collected and paid into the Exchequ and that the officers should keep the product separate from other venues till the next session of parliament, in order to be disposed of his Majesty and the two Houses should think fit. But the Lord Ch Justice represented this advice as low and trimming, and he moved th "his Majesty should cause his royal proclamation to issue, commandi all officers to collect, and the subjects to pay, these duties for his M jesty's use, as part of the royal revenue." The Lord Keeper ventu humbly to ask his Majesty to consider whether such a proclamat would be for his service, as it might give a handle to his Majest enemies to say that his Majesty, at the very entrance upon his gove ment, levied money of the subject without act of parliament. T Chief Justice's advice was far more palatable. The proclamat which he recommended was therefore ordered to be drawn up, and v immediately issued. The Lord Keeper had the baseness to affix Great Seal to this proclamation, thinking as he did of its expedie and legality. But rather than resign or be turned out of his office, was ready to concur in any outrage on the constitution, or to submi any personal indignity.

A parliament was found indispensable; and, counting on the v loyal disposition manifested by the nation, writs calling one were issued, returnable the 19th of Ma [MARCH, 1685.] As that day approached, the Lord Keeper began to write the spe which he expected to deliver in the presence of the King to the Houses on their assembling. He was much pleased with this per mance, on which he had taken uncommon pains, and when finished read it to his brother and his officers, who highly applauded it.* what was his consternation when he was told that he was not t allowed to open his mouth upon the occasion!†

Parliament meeting, the course was adopted which has been follo ever since. Instead of having on the first day of session, before the choice of a Speaker by the C mons, one speech from the King, and another from the Lord Chanc or Lord Keeper, to explain the causes of the summons,—the Comm being sent for by the Black Rod, the Lord Keeper merely desired to retire to their own Chamber and choose a Speaker, and to pr him at an hour which was named, for his Majesty's approbation. [MAY 19, 1685.] Speaker being chosen and approved of, and havin manded and obtained a recognition of the privileges o [A.D. 1685.]

* See the speech at full length. Life, ii. 192. There is nothing in it ver or very bad.
† Life, ii. 120.

Commons,—on the following day the King himself made a speech from the throne, and immediately withdrew.*

But this speech was not in modern fashion settled at the Cabinet; nor was it read the evening before at the Cockpit, or to the chief supporters of the government in both Houses at the dinner-table of the two leaders respectively; nor was it to be treated as the speech of the minister. "At least the Lord Keeper had no hand in it; for he was not so much as consulted about either the matter or expressions the King intended to use, as one might well judge by the unguarded tenor of it."†

Yet he still was mean enough to cling to office, and to do what he could for a government impatient to get rid of him. He had been very active in the elections; and by his influence had procured the return of a good many zealous Church-and-King members. "And to make the attendance easy to these gentlemen, whose concerns were in the country, he took divers of them to rack and manger in his family, where they were entertained while the parliament sat."‡ But nothing which he could do would mitigate the hostility of those who had vowed his destruction.

At the meeting of parliament, Jeffreys was made a Peer,§ that he might have the better opportunity to thwart and insult the Lord Keeper; although there had been no previous instance of raising a common-law judge to the peerage.

There were several appeals from decrees of the Lord Keeper speedily brought to a hearing. "Jeffreys affected to let fly at them, to have it thought that he was fitter to be Chancellor." He attended, neglecting all other business; and during the argument, and in giving his opinion, took every opportunity of disparaging the Lord Keeper's law, preparatory to moving reversals. He was particularly outrageous in the case of Howard *v.* the Duke of Norfolk,—being emboldened to talk confidently on matters with which he was not much acquainted, by having to rest on the reputation of Lord Nottingham. That great equity lawyer, contrary to the opinion of the two Chief Justices and the Chief Baron, whom he had called in to assist him, had [A. D. 1685.] held that an equitable estate tail might be created in a term of years; but his successor had reversed his decree, and the decree of reversal was now under appeal. "Lord Chief Justice Jeffreys, by means of some encouragement he had met with, took upon him the part of slighting and insulting his Lordship on all occasions that proffered. And here he had a rare opportunity; for, in his rude way of talking, and others of a party after him, he battered the poor decree; not without the most indecent affronts to his Lordship that in such an assembly ever were heard." The courtesy now prevailing between law Lords of opposite political parties was not then known between colleagues sitting in the same cabinet; and the poor Lord Keeper was assailed by the

* Life, ii. 191.
† Ibid. 197.
‡ 4 Parl. Hist. 1349.
§ May 15, 1685.

coarsest vituperation, and the most cutting ridicule. The second Ear of Nottingham, son of the Chancellor, "who hated him because he ha endeavoured to detract from his father's memory," likewise took thi opportunity to attack him, and got together many instances of his il administration of justice, and greatly exposed him. He was not rouse into retaliation or resistance; and he contented himself with a dı legal argument. The decree was reversed; and when he announce that the *contents had it*, he must have felt as if he had been soundi his own death-knell.* The lay lords who voted could have knov nothing of the merits of such a nice question; and must have be guided by favour or enmity to the Lord Keeper or the Lord Ch Justice.† What rendered the defeat and contemptuous usage the mc galling was the presence of the King; for James, like his brother, tended in the House of Lords when any thing interesting was comi on; and walked about the House, or stood by the fire, sat in his chair of state or on the woolsack, as suited fancy.‡

[A.D. 1685.]

"Having opened this scene," says Roger, "we are not to exp other than opposition, contempt, and brutal usage, of that Chief towa his Lordship while he lived."

There were few debates in the House of Lords during this short s sion; but, even in going through the common forms of the Ho Jeffreys found opportunities publicly to testify his contempt for the L Keeper; and in the Cabinet, in discussing the dispensation to be grai to Catholic officers to serve in the army, and other subjects, he « stantly laid traps for him, with a view of either making him obnox to the King, or odious to the public,—who considered him the authc every declaration or dispensation which passed the Great Seal.

Sunderland and other members of the cabinet openly joined in persecution, and "he was little less than derided by them. Being s to be laid aside, he was not relied upon in any thing, but was tru seal-keeper rather than a minister of state, and kept on for despatc the formularies, rather than for advice or trust."§ Why did he resign? It is difficult to understand the reasoning of his brother, thus accounts for his continuing to bear such insults:—"His Lord was so ill used at Court by the Earl of Sunderland, Jeffreys, and

* Burnet, ii. 357. It was believed that this reversal "gave the crisis to th easiness and distraction of mind he was labouring under."

† It is insinuated, that some, to please the King, were influenced by the co: ration that the appellant was a Roman Catholic, while the respondent was a P tant.—See 1 *Vernon*, 162. *Life*, ii. 93.

‡ By a reference to the Journals of the House of Lords, it appears that the attended almost every day during the whole of this session. The argum Howard v. Duke of Norfolk occupied two days. It was decided, June 19, 16 a very full house, there being present, besides the King, eighteen bishops, and seven temporal peers, although there was no other business to be done. Ther no division on the motion to reverse, so that the Lord Keeper must have been a entirely without support.

§ Life, ii. 132.

sub-sycophants, that I am persuaded if he had had less pride of heart, he had been tempted to have delivered up the Seal in full health. But he cared not to gratify, by that, such disingenuous enemies. He cared not to humour these barkers, or to quit his place before he might do it with safety to his dignity. He intended to stay till the King would bear him no longer, and then make it his Majesty's own act to remove him."*

He felt keenly a sense of the insignificance and disfavour into which he had fallen; and the anticipation of "the worse remaining behind," when he was to be finally kicked out, preyed [A. D. 1685.] upon his spirits. No longer was he earwigged by the Lord Cravens, who worship a favourite; no more did the foreign ambassadors bow low when they thought that he observed them: his levee was now deserted; he seemed to himself to discover a sneer on every countenance at Whitehall; and he suspected that the bar, the officers of the Court, and the bystanders in Chancery, looked at him as if they were sure of his coming disgrace. To shade himself from observation, while he sat on the bench he held a large nosegay before his face.†

Dreadfully dejected, he lost his appetite and his strength. He could not even get through the business of the Court; and *remanets* multiplying upon him kept him awake at night, and haunted him in his sleep. He drooped so much, that for some time he seemed quite heartbroken. At last, he had an attack of fever, which confined him to his bed.

The coronation was approaching, and it was important that he should sit in the "Court of Claims." Having recovered a little by the use of Jesuits' bark, he presided there, though still extremely weak;—and he walked at the Coronation "as a ghost with the visage of death upon him, such a sunk and spiritless countenance he had."‡

While he was in this wretched state, news arrived of the Duke of Monmouth having landed in the West of England and raised the standard of rebellion. The parliament, [June 13, 1685.] having come to a number of loyal votes, having attainted the Duke, and granted a supply,—was adjourned, that the members might assist in preserving tranquillity in their several districts. [July 2.]

The Lord Keeper talked of resigning, and wrote a letter to the Earl of Rochester, to ask leave to go into the country for the recovery of his health, saying, "I have put myself into the hands of a doctor, who assures me of a speedy cure by entering into a course of physic." Leave was given, and he proceeded to Wroxton, in Oxfordshire, the seat which belonged to him in right of his wife.

Here he languished while the battle of Sedgemoor was fought,—Monmouth, after in vain trying to melt the heart of his obdurate uncle, was executed on Tower Hill under his [A. D. 1685.] parliamentary attainder,—and the inhuman Jeffreys, armed with civil and military authority, set out on his celebrated "campaign." Roger North would make us believe that the dying Guilford was horrified by

* Life, ii. 222, 239. † Ibid. 133. ‡ Ibid. 205.

the effusion of blood which was now *incarnardining* the western counties by command of the Lord General Chief Justice, and that he actually interposed to stay it:—"Upon the news returned of his violent proceedings, his Lordship saw the King would be a great sufferer thereby, and went directly to the King, and moved him to put a stop to the fury which was in no respect for his service; but in many respects for the contrary. For though the executions were by law just, yet never were the deluded people all capitally punished; and it would be accounted carnage and not law or justice; and thereupon orders went to mitigate the proceeding. I am sure of his Lordship's intercession to the King on this occasion, being told it at the very time by himself." It is painful to doubt this exertion of mercy and firmness by the Lord Keeper; but an attention to dates, of which the biographer is always so inconceivably negligent, shows the story to be impossible. Jeffreys did not open his campaign by the slaughter of the Lady Lisle, at Winchester, till the 27th of August, and he carried it on with increased cruelty till the very end of September.* On the 5th of September, died Lord Keeper Guilford, at Wroxton, after having been for some weeks in a state of such debility and exhaustion, that, able only to attend to his spiritual concerns, he thought no more of domestic treason or foreign levy than if he had already slept in the grave.† For a short time after his arrival there, he rallied, by the use of mineral waters, but he soon had a relapse, and he could with difficulty sign his will. He was peevish and fretful during his sickness, but calmly met his end. "He advised his friends not to mourn for him, yet commended an old maid-servant, for her good will that said, *As long as there is life there is hope*. At length, having strove a little to rise, he said, *It will not do*,—and then, with patience and resignation, lay down for good and all, and expired."‡

[A.D. 1685.]

He was buried in Wroxton Church, in a vault belonging to his wife's family, the Earls of Down. There is no other monument to him than a large marble slab in the middle of the floor of the chancel, bearing the following inscription:—

"Here lyeth the body of the Right Hon^ble^ Francis Lord Guilford,
Lord Keeper of the Great Seale of England.
He was borne the 22d of October, 1637, and departed this life the 5th of
September, in the year of our Lord 1685."

"He was a crafty and designing man," says Bishop Burnet. "He had no mind to part with the Great Seal, and yet he saw he could

* 11 St. Tr. 297, *et seq.*

† Roger (I will not say from any bad motive) does not mention the day of his brother's death; but this is placed beyond all doubt by the entry on the record respecting the appointment of his successor.—*Cr. Off. Min. Book*, 121. This is a story he tells equally incredible and impossible, of a caution given by the Lord Keeper in an interview with the King, after Monmouth's execution, to beware of the Prince of Orange.—*Life*, ii. 227. Monmouth was executed on the 15th of July, and the Lord Keeper and the King never could have met afterwards.—See *Ralph*, 893. 11 *St. Tr.* 303.

‡ Life, ii. 215.

hold it without an entire compliance with the pleasure of the Court. Nothing but his successor made him be remembered with regret. He had not the virtues of his predecessor; but he had parts far beyond him. They were turned to craft; so that whereas the former (Lord Nottingham) seemed to mean well even when he did ill, this man was believed to mean ill even when he did well."* I accede to this character, with the exception of the estimate of North's "parts," which I think are greatly overrated. He was sharp and shrewd, but of no imagination, of no depth, of no grasp of intellect,—any more than generosity of sentiment. Cunning, industry, and opportunity may make such a man at any time. A Nottingham does not arise above once in a century.

Guilford had as much law as he could contain, but he was incapable of taking an enlarged and commanding view of any subject. The best specimen of his juridical powers is his judgment, when Chief Justice of the Common Pleas, in the great case of Soames *v.* Barnardiston, in which it was decided that an action at common law does not lie against a Sheriff, for a false return of a member of parliament, as the validity of the return ought to be determined by the House of Commons.† In equity, he did nothing to rear up the system of which the foundations had been so admirably laid by his predecessor. His industry was commendable; and I think he may be fairly acquitted of corruption, notwithstanding his indiscreet acceptance of a present of 1000*l.* from the Six Clerks, when they had a dispute with the Sixty, on which he was to adjudicate.

He labours under the imputation of once having expressed a constitutional sentiment, "that his Majesty's *defensive* weapons were his *guards*, and his *offensive* weapons the *laws*, and that *rebels* were to be *overcome* by opposing force to force, but to be *punished* only by law," —which from its rarity caused a great sensation. But where he was not under the apprehension of personal responsibility, there was nothing which he would not say or do to exalt the prerogative and to please his patrons. I shall add only one instance. Sir Thomas Armstrong was outlawed for high treason while beyond the seas unless he surrendered within a year. Being sent over a prisoner from Holland within a year, he insisted that he was entitled to a writ of error to reverse the outlawry and to be admitted to make his defence; but the Lord Keeper refused him his writ of error, first, on the pretence that there was no fiat for it by the Attorney-General, and then, that he had no right to reverse his outlawry, as he was present by compulsion. Thus the unhappy victim was sent to instant execution without trial.‡

So zealous a Conservative was Guilford, that "he thought the taking away of the tenures" (*i.e.* the abolition of wardship and the other oppressive feudal burdens introduced at the Conquest) "a desperate wound to the liberties of the people."

* O. T. ii. 185, 357.

† 6 St. Tr. 1092, 1098. His judgment was confirmed on a writ of error by the House of Lords after the Revolution.—See *Lord Campbell's Speeches*, 277.

‡ 10 St. Tr. 106.

The Court wags made great sport of him, the Earl of Sunderlan taking the lead, and giving out the signal, while Jeffreys was alway ready to join in the laugh. I may give as an example "the story c the Rhinoceros." My Lord Keeper went one day into the City, accon panied by his brother Sir Dudley, to see a Rhinoceros of enormous si lately imported, and about to be exhibited as a show.* Next mornii at Whitehall, a rumour was industriously spread, that the Lord Keep had been riding on the Rhinoceros, "and soon after dinner some Lor and others came to his Lordship to know the truth from himself; 1 the setters of the lie affirmed it positively, as of their own knowled That did not give his Lordship much disturbance, for he expected better from his adversaries. But that his friends, intelligent perso who must know him to be far from guilty of any childish levity, sho believe it, was what *roiled* him extremely, and much more when tl had the face to come to him to know if it were true. So it passed; the Earl of Sunderland, with Jeffreys and others of that crew, ne blushed at the lie of their own making, but valued themselves upo as a very good jest."†

To see how far his compliance with the humours of the Court w go, they next persuaded his own brother-in-law (that he might not pect the hoax) to wait upon him, and in strict confidence, and great seriousness, to advise him to keep a mistress, "otherwis would lose all his interest with the King; for it was well unders that he was ill looked upon for want of doing so, because he see continually to reprehend them by not falling in with the general tom; and the messenger added, that if his Lordship pleased he w help him to one." He declined the offer,—with much politeness, l ever, lest he should give offence. But with his familiar friends made wonderfully merry with this state policy, especially the proc part, and said, *that if he were to entertain a madam, it should be of his own choosing, and not one of their stale trumpery.*"‡

Although he never aimed at oratory, it is said that he meditat "History of his own Times." He might have transmitted to us n curious anecdotes, but the performance must have been without rary merit; for some of his notes which he had written as mat are in the most wretched style, and show that he was unacqua with the first principles of English composition, and even witl common rules of grammar. He did publish two or three short t "on Music" and other subjects,—which were soon forgotten. He well versed in music, conversed with Sir Peter Lely about pai

* Evelyn tells us that this was the first Rhinoceros ever introduced into En and that it sold for 2000*l*. Shakspeare may have seen "the Hyrcan Tiger," could only have heard, or read, or seen a picture of "the armed Rhinoceros."

† Life, ii. 167. The marginal note to this anecdote by Roger is amusi "The foolish lie of the Rhinoceros. His Lordship much roiled thereat." The "roiled" was transported to the American plantations, where it may still b with. See the *Clockmaker*.

‡ Life, ii. 239.

speculated with natural philosophers on the use of the bladder of fishes, and learned several of the continental languages; but he seems never to have looked into a classical writer after he left college, and to have had the same taste for the *belles lettres* as his brother Roger, who placing them all in the same category, talks with equal contempt of "departed quacks, *poets*, and almanack makers."* Although his two immediate predecessors were libelled and lauded by popular verses in the mouths of every one, I can find no allusion in any fine writer either of the Court or Country party to North; and it may be doubtful whether he knew any thing of the works of Butler, of Dryden, of Waller, or of Cowley, beyond the snatches of them he may have heard repeated in the merry circle at Whitehall.

He lived very hospitably,—receiving those who retailed the gossip of the day in his house in Great Queen Street, Lincoln's Inn Fields, —then the fashionable quarter of the town for the great nobility as well as for eminent lawyers. He had a large range of stables near his house, under the superintendence of his "Master of the Horse," an old cavalier officer who could smoke tobacco and taste claret, though not very skilful or careful in his office. There were various tables in the house daily,—from that of the Major Domo, or the "prefect of eating," down to that of the inferior servants, who "ate like harpies at the catch, and, to say truth, most scandalously." The nobility and chief gentry coming to London frequently dined with him. The dinner was at a very early hour, and did not last long. "After a solemn service of tea in a withdrawing-room, the company usually left him."† He had a Court-room fitted up on the ground-floor, which he then entered,—and there he continued hearing causes and exceptions, sometimes to what was considered a late hour. About eight o'clock came supper, which he took with a few private friends, and relished as the most agreeable and refreshing meal of the day.‡

In the vacations, when he could be spared from London, he retired to his seat at Wroxton. For some years he likewise rented a villa at Hammersmith, but this he gave up soon after his wife's death.

He had the misfortune to lose her after they had been married only a few years. She seems to have been a very amiable person. She found out when her husband had any trouble upon his spirits, and she would say, "*Come, Sir Francis* (as she always styled him), *you shall not think; we must talk and be merry, and you shall not look on the fire as you do. I know something troubles you; and I will not have it so.*"§ He would never marry again, which in his last illness he repented, for "he fancied that in the night human heat was friendly."

He was extremely amiable in all the relations of domestic life. Nothing can be more touching than the account we have of the warm and steady affection subsisting between him and his brother, who survived to be his biographer.

* Preface, vi.
† Life, ii. 319, 167.
‡ Ibid. 195, 210.
§ Ibid. 316.

The Lord Keeper was a little but handsome man, and is said to have had "an ingenuous aspect," his motto being "Il volto sciolto, i pensieri stretti."

He left behind him Francis, his son and heir, the second Baron Guilford, father of Francis, the third Baron Guilford, on whom descended the Barony of North, by failure of the elder branch of the family, and who, in 1752, was created Earl of Guilford, and was the father o Lord North, the prime minister, so celebrated for his polished oratory his refined wit, and amiable manners. His daughter, Lady Charlott Lindsey, still survives, the grace and ornament of her sex, in the reig of Queen Victoria.

The title of Guilford is now enjoyed by Francis, the sixth Earl.*

When we estimate what the Lord Keeper achieved, we should be in mind that he died at *forty-eight*, an age considerably more a vanced than that reached by his immediate successor; yet under th at which other Lord Chancellors and Lord Keepers began to look f promotion. Although I have brought him into existence three yea sooner than former biographers,—he was in truth Solicitor-General *thirty-four*, Attorney-General at *thirty-seven*, Chief Justice of the Co mon Pleas at *thirty-eight*, and Lord Keeper and a Peer at *forty-fi* It is probably well for his memory that his career was not prolong He might have made a respectable Judge when the constitution w settled; but he was wholly unfit for the times in which he lived.

I ought not to conclude this memoir without acknowledging my ligations to "Roger North's Life of the Lord Keeper;" which, li "Boswell's Life of Johnson," interests us highly, without giving a very exalted notion of the author. Notwithstanding its extravag praise of the hero of the tale, its inaccuracies, and its want of meth it is a most valuable piece of biography, and with Roger's Lives his brothers "Dudley and John," and his "Examen," ought to studied by every one who wishes to understand the history and manners of the reign of Charles II.

CHAPTER XCVIII.

LIFE OF LORD CHANCELLOR JEFFREYS† FROM HIS BIRTH TILL HE W APPOINTED RECORDER OF LONDON.

It is hardly known to the multitude that this infamous person e held the Great Seal of England; as, from the almost exclusive recol

* Grandeur of the Law, p. 64.

† The name is spelt no fewer than eight different ways:—"Jeffries," "Jefferi "Jefferys," "Jeffereys," "Jefferyes," "Jeffrys," "Jeffryes," and "Jeffreys," an himself spelt it differently at different times of his life; but the last spelling is which is found in his patent of peerage, and which he always used afterwards.

tion of his presiding on criminal trials, he has been execrated under the designation of "JUDGE JEFFREYS,"—which is as familiar in our mouths as household words. Yet was he Chancellor a considerably longer time than Chief Justice,—and in the former capacity, as well as the latter, he did many things to astonish and horrify mankind.

He has been so much abused, that I began my critical examination of his history in the hope and belief that I should find that his misdeeds had been exaggerated, and that I might be able to rescue his memory from some portion of the obloquy under which it labours; but I am sorry to say, that, in my matured opinion, although he appears to have been a man of high talents, of singularly agreeable manners, and entirely free from hypocrisy, his cruelty and his political profligacy have not been sufficiently exposed or reprobated; and that he was not redeemed from his vices by one single solid virtue.

George Jeffreys was a younger son of John Jeffreys, Esq., of Acton, near Wrexham, in Denbighshire, a gentleman of a respectable Welsh family, and of small fortune. His mother was a daughter of Sir Thomas Ireland, Knight, of the County Palatine of Lancaster. Never was child so unlike parents; for they were both quiet, sedate, thrifty, unambitious persons, who aspired not higher than to be well reputed in the parish in which they lived, and decently to rear their numerous offspring. Some imputed to the father a niggardly and covetous disposition; but he appears only to have exercised a becoming economy, and to have lived at home with his consort in peace and happiness, till he was made more anxious than pleased by the irregular advancement of his boy George. It is said he had an early presentiment that this son would come to a violent end; and was particularly desirous that he should be brought up to some steady trade, in which he might be secured from temptation and peril. The old gentleman lived till he heard, after the landing of the Prince of Orange, of the Lord Chancellor being taken up at Wapping disguised as a sailor, being assaulted by the mob, being carried before the Lord Mayor, and dying miserably in the Tower of London.*

He, of whom such tales were to be told, was born in his father's lowly dwelling at Acton in the year 1648.† He showed, from [A.D. 1648.] early infancy, the lively parts, the active temperament, the outward good humour, and the overbearing disposition which distinguished him through life. He acquired an ascendency among his companions in his native village by coaxing some and intimidating others, and making those most opposed to each other believe that he favoured

* Pennant saw a likeness of this old gentleman at Acton House, taken in 1690, in the 82d year of his age.—See Pennant's *Tour in Wales*, i. 296.

† This is generally given as the year of his birth, but I have in vain tried to have it authenticated. There is no entry of his baptism, nor of the baptism of his brothers, in the register of Wrexham, the parish in which he was born, nor in the adjoining parish of Gresford, in which part of the family property lies. I have had accurate searches made in these registers by the kindness of my learned friend Mr. Serjeant Atcherley, who has estates in the neighbourhood. It is not improbable that, in spite of the Chancellor's great horror of dissenters, he may have been baptized by "a dissenting teacher."

both. At marbles and leap-frog he was known to take undue advai tages; and, nevertheless, he contrived, notwithstanding secret murmui to be acknowledged as "Master of the Revels."

While still very young he was sent to the free school at the town [A. D. 1656.] Shrewsbury, which was then considered a sort of meti polis for North Wales. Here he continued for two or thi years: but we have no account how he demeaned himself. At the e of this time his father thought of binding him apprentice, but, by way [A. D. 1659.] finishing his education, sent him for a short time to Paul's School, in the City of London. The sight of metropolis had a most extraordinary effect upon the mind of this arc youth, and exceedingly disgusted him with the notion of returning Denbighshire, to pass his life in a small provincial town as a mer On the first Sunday in every term he saw the Judges and the Serje come in grand procession to St. Paul's Cathedral, and afterwards g dine with the Lord Mayor,—appearing little inferior to this great I of the City in power and splendour. He heard that some of them been poor boys like himself, who had pushed themselves on without tune or friends; and though he was not so presumptuous as to hope, another Whittington, to rise to be Lord Mayor, he was resolved th would be Lord Chief Justice or Lord Chancellor.

Now was the time when he acquired whatever general learnin possessed. The Master of St. Paul's School, at this time, was Sa Cromleholme, or Crumlum, who, for his skill in languages, obtaine name of Πολυγλωττος, and under him Jeffreys applied with cons able diligence to Greek and Latin, though occasionally flogged for ness and insolence. He at last ventured to disclose his scheme c coming a great lawyer to his father, who violently opposed it, as and romantic and impossible,—and who inwardly dreaded that, involving him in want and distress, it might lead to some fatal trophe. He wrote back to his son, pointing out the inability of t mily to give him a University education, or to maintain him at the of Court till he should have a chance of getting into practice,—his want of connexions in London,—and the hopelessness of his en into a contest in an overstocked profession with so many who ha advantage of superior education, wealth, and patronage. Althou aspirant professed himself unconvinced by these arguments, an tried to show the certainty of his success at the bar,—he must stood a crop-eared apprentice behind a counter in Denbigh, Ruth Flint, if it had not been for his maternal grandmother, who was p to see the blood of the Irelands break out, and who, having a jointure, offered to contribute a part of it for his support. The U sity was still beyond their means; but it was thought this mi better dispensed with if he should be for some time at one of our schools of royal foundation,—where he might form acquaintances wards to be useful to him. The father reluctantly consented, hope that his son would soon return to his sober senses, and th project would be abandoned with the general concurrence of the

Meanwhile young George was transferred to Westminster School, then under the rule of the celebrated Busby.

There is reason to fear that the zeal for improvement which he had exhibited at St. Paul's soon left him, and that he here began to acquire those habits of intemperance which afterwards proved so fatal to him. [A. D. 1661.] His father hearing of these had all his fears revived, and when the boy was at Acton during the holydays, again tried in vain to induce him to become a tradesman. But finding all dissuasions unavailing, the old gentleman withdrew his opposition, giving him a gentle pat on the back, accompanied by these words,—"Ah, George, George, I fear thou wilt die with thy shoes and stockings on!"

Yet the wayward youth while at Westminster had fits of application, and carried away from thence a sufficient stock of learning to prevent him from appearing in after-life grossly deficient when any question of grammar arose. He was fond of reminding the world of the great master under whom he had studied. On the trial before him as Chief Justice, in the year 1684, of Rosewell, the dissenting minister, for high treason in a sermon delivered from the pulpit, an objection was taken to the sufficiency of the indictment, in which it was alleged that the defendant had said, "We have had two wicked kings together, who have permitted Popery to enter in under their noses, whom we can resemble to no other person but to most wicked Jeroboam; and if *they* would stand to their principles, he did not fear but *they* would overcome their enemies, as in former times, with rams' horns, broken platters, and a stone in a sling." The counsel insisting that it was not sufficiently averred who were thus to overturn the government by physical force, the Chief Justice, who, on account of a suggestion from Government, wished in this case to procure an acquittal, favoured the objection, and said, "I think it must be taken to be an entire speech, and you lay it in the indictment to be so, and then the relative must go to the last antecedent, or else Dr. Busby (that so long ruled in Westminster School) taught me quite wrong, and who had tried most of the grammars extant, and used to lay down, as a positive rule of grammar, *that the relative must refer to the last antecedent*."*

His confidence in his own powers was so great, that, without conforming to ordinary rules, he expected to overcome every obstacle. Being now in the neighbourhood of Westminster Hall, his ambition to be a great lawyer was inflamed by seeing the grand processions on the first day of term, and by occasionally peeping into the Courts when an

* 10 *St. Tr.* 299.—The bitter spite always shown against Jeffreys by Roger North is explained by this trial. As junior counsel for the Crown he had drawn the indictment, and was eager to defend it against the intimation of the opinion of the Bench.—*Mr. North.* "Will your Lordship please to spare me a word?"—*L. C. J.* "Ay, sir, let every man be heard, in God's name." Roger makes some observations, which I must acknowledge are rather foolish, and then the C. J. thus puts him down:—*Mr. North.* "The argument turns both ways upon that. It is so loose a hung-together indictment, as truly I have scarce seen." The Court took time to consider, and the prisoner was pardoned.

important trial was going forward. He must have been greatly struck by the grandeur of the Earl of Clarendon, who then presided in the Court of Chancery. In his waking moments he could scarcely have hoped to succeed him, but such visions passed before his imagination, and when he was actually Lord Chancellor he used to relate that, while a boy at Westminster School, he had a dream, in which a Gipsy read his fortune, foretelling "that he should be the chief scholar there, and should afterwards enrich himself by study and industry, and that he should come to be the second man in the kingdom, but, in conclusion, should fall into disgrace and misery."

He was now sixteen, an age after which it was not usual to remain at school in those days. A family council was called at Acton, and as George still sanguinely adhered to the Law, it was settled that, the University being quite beyond their reach, he should immediately be entere at an Inn of Court; that, to support him there, his grandmother shoul allow him forty pounds a year, and that his father should add ten pounc a year for decent clothing.* The aid which has since been four available to poor students, from literary labour, and of which, when student at Lincoln's Inn, I availed myself, was then unknown; that this was the whole revenue he could calculate upon till it shou be augmented by the distant and uncertain accession of clients a fees.

However, he believed in his dream, and, on the 19th of May, 16([A.D. 1663.] to his great joy, he was admitted a member of the Inı Temple.† He got a small and gloomy chamber, in whi with great energy, he began his legal studies. He not only ha(natural boldness of eloquence, but an excellent head for law. W steadiness of application he would have greatly excelled Lord Kee Guilford, and in the mastery of this science would have rivalled L Hale and Lord Nottingham. But he could not long resist the ten ations of bad company. Having laid in a very slender stock fc Counsel or a Judge, he forsook Littleton and Plowden,‡ "moots readings," for the tavern, where was his greatest delight. He seen have escaped the ruinous and irreclaimable vice of gaming, but to l fallen into all others to which reckless Templars were prone. Ne theless, he had ever a keen eye to his own interest; and in these sc of dissipation he assiduously cultivated the acquaintance of young a neys and their clerks, who might afterwards be useful to him. could not, like Mr. Surrebutter in the Pleader's Guide, give them treats at his chambers,§ but, when they met over a bowl of pun

* Though so small, it was not much less than that of Lord Keeper Guilfo son of a peer, *ante*, p. 341.

† "Jefferies (Gs.) Georgius Jefferies de Acton in Comitatu Denbigh gen admissus est in hanc Societatem, &c." May 19, 1663. *Admission Book, Temple*, folio 918.

‡ "He scorned Littleton and Plowden too;
With mouldy authors he'd have nought to do."
Jeffrey's Elegy on Old F

§ This great nisi prius leader, in narrating his rise, thus describes his gues

the Devil tavern, or some worse place, he charmed them with songs and jokes, and took care to bring out before them, opportunely, any scrap of law which he had picked up, to impress them with the notion that, when he put on his gown and applied to business, he should be able to win all the causes in which he might be retained. He was exceedingly popular, and he had many invitations to dinner; which, to make his way in the world, he thought it better to accept, than to waste his time over the midnight oil, in acquiring knowledge which it would never be known that he knew, and therefore was not worth knowing.

After the first fervour of loyalty which burst out at the Restoration had passed away, a malecontent party was formed which gradually gained strength. [A. D. 1666.] In this most of the aspiring young lawyers, not actually employed by the government, were ranged,—finding it politic to begin in "the sedition line,"* that their value might be better appreciated by the Court, and a better price might be bid for them.† From such reasoning, or perhaps from accidental circumstances, Jeffreys associated himself with the popular leaders, and in the hour of revelry would drink on his knees any toasts to "the good old cause," and to "the immortal memory of old Noll." The Calves' Head Club had not yet been established, or he probably would not have scrupled to belong to it, and to have drunk with devotion the two standing toasts of the brethren,—to "the man in the mask," and "the man that would do it without a mask."

He was often put to great shifts from the embarrassed state of his finances, the 10*l.* for "decent clothing" for a year being expended in a single suit of cut velvet, and his grandmother's 40*l.* being insufficient to pay his tavern bills. But he displayed much address in obtaining prolonged and increased credit from his tradesmen. He borrowed

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"*To wit*, old Buzzard, Hawk, and Crow,
Item, Tom Thornback, Shark, and Co.,
Attorneys all as keen and staunch
As e'er devoured a client's haunch.
Nor did I not their clerks invite,
To taste said venison hashed at night;
For well I knew that hopeful fry
My rising merits would descry;
The same litigious course pursue,
And when to fish of prey they grew,
By love of food and contest led,
Would haunt the spot where once they fed."

Pl. Guide, part i. lect. vii.

* This expression is said to have been invented by that famous Stenographer celebrated in the "Pleader's Guide:"—

"Sit behind some fat attorney,
And make a friend of Mr. Gurney."

—the father of that very worthy man, the late Mr. Baron Gurney. The old gentleman being asked about the year 1792, when State Trials were so rife, how his son John was getting on at the bar, replied, "Remarkably well; he has taken to the sedition line, and I hope he will make his fortune in it."

† Sir Francis North valued himself much on having been an exception to this rule, and always loyal.

adroitly; and it is said that such an impression was made by his opening talents, that several wealthy men on the popular side voluntarily made him presents of money in the hope of the important services they were speedily to receive from his support.

It is very much to be regretted that we have not from a Roger North more minute information with respect to the manner in which his character was formed, and his abilities were cultivated. He seems to have been a most precocious young man. While still in his twentieth year, he was not only familiarly acquainted with the town, and completely a man of the world, exciting confident expectations of great future eminence, but he was already received among veteran statesmen as a member of an important party in the state, consulted as to their movements, and regarded as their future leader.

We are now actually to see him on the stage of public life. It has been constantly asserted, that he made his entrance most irregularly into the profession of the law. A story was propagated soon after his death, and has been repeated ever since, that he was never called to the bar, and that for lack of councillors, who are all supposed to have been killed or frightened away by the plague,—a the Kingston assizes in 1666, being then a lad of eighteen, he boldl put on a bombazeen gown, walked into Court as a barrister, was ir trusted with briefs by the attorneys, won verdicts, and continued t practise with great applause ever after. But it bears such improbabil ties on the face of it, that hardly any evidence could support it. Tl plague of 1666 did not rage any where out of London so as to interfe with the common affairs of life. It must have been fatal, indeed, befo it would induce the members of the circuit established in business, candidates for it, to give up their profits and their position to adve turous rivals.* In such a state of things neither judge, jury, nor w nesses, nor attorneys, nor parties, would have attended. If there h been any presumptuous stripling so absurd as to make the suppos attempt, he could not have inspired confidence into any one. must farther bear in mind that the regulations, by which no person v allowed to practise as a barrister without being called to the bar by of the four Inns of Court, were then quite as strict and as rigidly forced as they now are. If by any unaccountable accident the sh barrister had been permitted to plead a cause in the country, he wc have been silenced on his return to London, and if contumacious, would have been disgracefully expelled from the Society whose cipline he had defied. The story rests on vague rumour, not corr rated by any name, circumstance, or authority. But at once to demo

[Aug. 1666.]

* At Gloucester summer assizes, 1832, the Asiatic cholera was raging in city; tar barrels were burnt all day in the streets,—no one entered the county except on some sort of compulsion, and every one who entered held in his some charm against the infection. Yet of a bar above fifty in number, onl man fled the field. There were many deaths daily in Leather Bottle Lane, clo my lodgings, but I thought that I, the leader of the circuit, was bound to rema my post, and to give a chance to my juniors.

it, I find upon a reference to the books of the Inner Temple, which I have been kindly permitted to examine, that the same George Jeffreys admitted on the 19th of March, 1663,—after keeping all his terms, and doing all his exercises, was regularly called to the bar on the 22d day of November, 1668,—having been on the books of the Society five years and six months,—and the requisite period of probation having been previously, by a general regulation, reduced from seven to the present period of five years. I cannot offer direct proof that he did not practise as a barrister in Westminster Hall in the intermediate time; but when I show the exact date of his actual call, surely the inevitable inference is, that till then he continued *in statu pupillari* as a student of law.

Although he does not appear ever to have been chosen "Reader" or "Treasurer" of the Society, yet in the year 1678, on being elected Recorder of London, he was made a Bencher,* and he continued to be so till he took the coif, when he necessarily left it for Serjeant's Inn.

During his early career at the Bar, he was involved in difficulties, which could only have been overcome by uncommon energy. Pressed by creditors, and at a loss to provide for the day that was passing over him, he had burdened himself with the expenses of a family. But this arose out of a speculation, which, in the first instance, was very prudent. Being a handsome young fellow, and capable of making himself acceptable to modest women,—notwithstanding the bad company which he kept, he resolved to repair his fortunes by marrying an heiress; and he fixed upon the daughter of a country gentleman of large possessions, who, on account of his agreeable qualities, had invited him to his house. The daughter, still very young, was cautiously guarded, and almost always confined to her chamber; but Jeffreys contrived to make a confident and friend of a poor relation of hers, who was the daughter of a country parson, and lived with her as a companion. Through this agency he had established a correspondence with the heiress, and an interest in her affections, so that on his last visit she had agreed, if her father's consent could not be obtained, to elope with him. What was his disappointment, soon after his return to his dismal chamber in the Inner Temple, which he had hoped soon to exchange for a sumptuous manor-house, to receive a letter from the companion, informing him that his correspondence with the heiress had been discovered by the old father, who was in such a rage, that, locking up her cousin, he had instantly turned herself out of doors, and that, having taken shelter in the house of an acquaintance in Holborn, she was there in a state of great destitution and distraction,—afraid to return to her father, or to inform him of what had happened. His conduct on this occasion may be truly considered the brightest passage in his history. He went to her, found her in tears, and considering that he had been the means of ruining her

* "Jan. 26, 1678. At this parliament it is ordered, that Sir George Jefferyes, Knt., be and is called to be one of the Masters of the Bench of this Society."—Entry in Books of I. T.

prospects in life (to say nothing of her being much handsomer than her rich cousin), he offered her his hand. She consented. Her father, notwithstanding the character and circumstances of his proposed son-in-law,—out of regard to his daughter's reputation, sanctioned their union, and to the surprise of all parties gave her a fortune of 300*l.* Accordingly, "on the 23d of May, 1667, at Allhallows Church, Barking, George Jeffreys, of the Inner Temple, Esq., was married to Sarah, the daughter of the Reverend Thomas Neesham, A. M."*

She made an excellent wife, and I do not find any complaint of his having used her ill, till near the time of her death, a few years after, when he had cast his affections upon the lady who became the second Mrs. Jeffreys. Meanwhile he left her at her father's, occasionally visiting her; and he continued to carry on his former pursuits, and to strengthen his connexions in London, with a view to his success at the bar, on which he resolutely calculated with unabated confidence.

He was not disappointed. Never had a young lawyer risen so rapidly into practice. But he cut out a new line for himself. Instead of attending in Westminster Hall to take notes in law French of the long-winded arguments of Serjeants and eminent counsel, where he would have had little chance of employment in actions real, and trials at bar, as he was utterly unacquainted with "Fitzherbert's Natura Brevium," or "the Doctrina placitandi,"† he did not go near any of the superior Courts for some years, but confined himself to the Old Bailey, the London Sessions, and Hicks's Hall. There he was soon "the cock of the walk."

But at his outset there was no art, however low, to which he would not resort, with a view to "get on." "He used to sit in coffee-houses, and order his clerk to come and tell him *that company attended him at his chamber*. At which he would huff and say,—*Let them stay a little; I will come presently;*—and thus made a show of business."‡

Some of his pot companions were now of great use to him in bringing him briefs, and recommending him to business. All this pushing would have been of little avail if he had not fully equalled expectation by the forensic abilities which he displayed. He had a very sweet and powerful voice, having something in its tone which immediately fixed the attention, so that his audience always were compelled to listen to him,

* Parish Reg. of Allhallows, Barking.

† Considering his recorded habits as a student, it is possible he might have made the same use of this treatise to acquire the reputation of learning among the attorneys as the celebrated Mr. Surrebutter, who, on their approach, having conveyed into the coal-hole what interested him more, thus describes his own demeanour:—

"At once with serious look profound,
Mine eyes communing with the ground,
I seem'd like one estrang'd to sleep,
'And fix'd in cogitation deep;'
Sat motionless, and in my hand I
Held my Doctrina Placitandi!"

‡ North's Life of Guilford, ii. 96.

irrespective of what he said.* "He was of bold aspect, and cared not for the countenance of any man." He was extremely voluble, but always perspicuous and forcible, making use of idiomatic, and familiar, and colloquial, and sometimes of coarse language. He never spared any assertion that was likely to serve his client. He could get up a point of law so as to argue it with great ability, and with the Justices, as well as with Juries, his influence was unbounded. He was particularly famous for his talent in cross-examination, indulging in ribaldry and banter to a degree which would not now be permitted. The audience being ever ready to take part with the persecuted witness, the laugh was sometimes turned against him. It is related that, about this time, beginning to cross-examine a witness in *a leather doublet*, who had made out a complete case against his client, he bawled forth, "You fellow in the leathern doublet, pray what have you for swearing?" The man looked steadily at him, and "Truly, sir," said he, "if you have no more for lying than I have for swearing, you might wear a leathern doublet as well as I." This blunt reply got to the west end of the town, and was remembered among the courtiers against Jeffreys when he grew to be a great man.

While a trial was going on, he was devotedly earnest in it; but when it was over, he would recklessly get drunk, as if he never were to have another to conduct. Coming so much in contact with the aldermen, he ingratiated himself with them very much, and he was particularly patronized by a namesake (though no relation) of his own,—Jeffreys, alderman of Bread Street Ward, who was very wealthy, a great smoker, (an accomplishment in which the lawyer could rival him, as well as in drinking,) and who had immense influence with the livery.†

Pushed by him, or rising rapidly by his own buoyancy, George, our hero, before he had been two years and a half at the bar, and while only twenty-three years of age, was elected Common Serjeant of the city of London,—an office which has raised a Denman as well as a Jeffreys to be Chief Justice of England. This first step of his elevation he obtained on the 17th of March, 1671, on a vacancy occasioned by the resignation of Sir Richard Browne. [A. D. 1671.]

But his ambition was only inflamed by this promotion, which disqualified him for a considerable part of his bar practice, and he resolved entirely to change the field of his operations,—making a dash at Westminster Hall. He knew well that he could not be employed to draw declarations and pleas, or to argue demurrers or special verdicts; but he hoped his talent for examining witnesses and for speaking might avail him. At any rate, this was the only road to high distinction in his profession, and he spurned the idea of spending his life in trying petty larcenies, and dining with the city companies.

* A few such voices I have known in my time,—particularly that of the late Sir William Garrow,—whose early professional career was pretty much like that of Jeffreys, although he was free from his vices.

† There were two aldermen of this name in the reign of Charles II. John, elected Alderman of Bread Street in 1661, of whom we are speaking, and Robert, elected Alderman of Cordwainer's Ward in 1676, and Lord Mayor in 1686.

Hard drinking was again his great resource. He could now afford to invite the great city attorneys to his house, as well as carouse with them at taverns, and they were pleased with the attentions of a rising barrister as well as charmed with the pleasantry of the most jovial of companions. He likewise began to cultivate fashionable society, and to consider how he might get an introduction at Court. "He put himself into all companies,—for which he was qualified, by using himself to drink hard." Now was the time when men got forward in life by showing their hatred of puritanism, their devotion to Church and King, and an affectation of vice, even if actually free from it.

Jeffreys was still successful. He was first employed at Nisi Prius in actions for assaults and defamation; but before long the City attorneys gave him briefs in commercial causes tried at Guildhall, and though in *banc* he could not well stand up against regularly bred lawyers, like Sir Francis North, Sir William Jones, Sir Creswell Levinz, and Heneage Finch, the son of the Lord Chancellor Nottingham,—in most causes he was equal to them before a jury, and he rapidly trod upon their heels.

He anxiously asked himself how was he to climb to high office. He had started with the disaffected party, and they had been of essential use to him; but though they were growing in strength, no chance existed of their being able to make Attorney-Generals, Chief Justices, or Chancellors. At the same time he did not like yet to break with those who might still serve him,—particularly in obtaining the Recordership which he coveted as a stepping-stone to something better. He resolved so to manage as to be a favourite of both parties till he could devote himself entirely and exclusively and openly to the one which should be dominant;—and he again succeeded.

From his great influence in the City he found no difficulty in making the acquaintance of Will Chiffinch, "the trusty page of the back stairs," who, besides other employments of a still more confidential nature, was intrusted by Charles II. to get at the secrets of all men of any consequence in every department of life. "This Mr. Chiffinch," says Roger North, "was a true secretary as well as page, for he had a lodging at the back stairs, which might have been properly termed 'the Spy Office,' —where the King spoke with particular persons about intrigues of all kinds; and all little informers, projectors, &c., were carried to Chiffinch's lodging. He was a most impetuous drinker, and in that capacity an admirable spy; for he let none part with him sober, if it were possible to get them drunk, and his great artifice was pushing idolatrous healths of his good master, and being always in haste; *for the King is coming*, which was his word. Nor, to make sure work, would he scruple to put his master's salutiferous drops (which were called the King's, of the nature of Goddard's) into the glasses; and being an Hercules well-breathed at the sport himself, he commonly had the better; and so fished out many secrets, and discovered men's characters, which the King could never have obtained the knowledge of by any other means. It is likely that Jeffreys being a pretender to main

feats with the citizens, might forward himself, and be entertained by Will Chiffinch, and that which at first was mere spying turn to acquaintance, if not friendship, such as is apt to grow up between immense drinkers, and from thence might spring recommendations of him to the King, as the most useful man that could be found to serve his Majesty in London."*

Thus while Mr. Common Serjeant was caballing in the City with Lord Shaftesbury, who had established himself in Aldersgate Street, and talked of becoming Lord Mayor, he had secretly got a footing at Court, and by assurances of future services disposed the government to assist him in all his jobs. His opposition friends were a little startled by hearing that he had been made Solicitor to the Duke of York; but he assured them that this was [SEPT. 14, 1677.] merely a professional employment, unconnected with politics, which, according to professional etiquette, he could not decline; and when he was knighted as a mark of royal favour, with which he was silly enough to be much tickled, he said that he was obliged reluctantly to submit to the degradation as a consequence of his employment.

By some mischance, which is not explained, he missed the office of Recorder on the vacancy occasioned by the resignation of Sir John Howel, who so outraged public decency on the trial of Penn and Mead;† but Sir William Dolbein, the successful candidate, being made a Judge on the 22d of October, 1678, Jeffreys was then elected his successor. Upon this occasion, there were three other candidates,—Mr. Richardson, a Judge of the Sheriff's court; Mr. Turner, a bencher of Gray's Inn; and Mr. Robert Belwood, a barrister of the Middle Temple: but he was so warmly supported by both parties in politics, that they all withdrew before the day of nomination, and he is said in the City Records to have been "freely and unanimously elected."

CHAPTER XCIX.

CONTINUATION OF THE LIFE OF LORD CHANCELLOR JEFFREYS TILL HIS APPOINTMENT AS LORD CHIEF JUSTICE OF THE KING'S BENCH.

THE new Recorder had hardly been sworn in, when, feeling that the liberals could do nothing more for him, he utterly cast them off, becoming for the rest of his life, the open, avowed, unblushing slave of the Court, and the bitter, persecuting, and unappeasable [A.D. 1678.] enemy of the principles he had before supported, and of the men he had professed to love.

He entirely forsook Thanet House, in Aldersgate Street, and all the meetings of the Whigs in the city; and instead of secret interviews

* Roger North's Life of Guilford, ii. 98. † 6 St. Tr. 951.

with Will Chiffinch in "the Spy Office," he went openly to Court, and, with his usual address, he contrived, by constant assiduities and flatteries, to gain the good graces both of Nell Gwynn and of the Duchess of Portsmouth, who, since the fall of Lady Castlemaine, held divided empire at Whitehall, balancing the Roman Catholic and Protestant parties. To each of these ladies, it would appear from the libels of the day, his rise was attributed.*

However, not long after he had openly ratted, an accident happened that had like to have spoiled all his projects; and that was the breaking out of the Popish Plot. Although there is no reasonable ground for saying that it was contrived by Shaftesbury, he made such skilful and unscrupulous use of it, that suddenly, from appearing the leader of a small, declining, and despairing party, he had the city and the nation at his beck, and with a majority in both Houses of Parliament, there seemed every probability that he would soon force himself upon the King, and have at his disposal all the patronage of the government. [A.D. 1679.] Jeffreys was for some time much disconcerted, and thought that once in his life he had made a false move. He was utterly at a loss how to conduct himself; and his craft never was put to so severe a trial. It is even said, that he had the meanness to try to reconcile himself to his old friends. But I do not believe that he seriously made or contemplated such an attempt, as it would have been foolish; for he had, in the insolence of his triumph, left himself no retreat, and he had not only deserted but vituperated and insulted the leaders of the opposition.

I have little doubt, therefore, that he soon recovered his courage, and with his usual intuition saw the right course to be pursued; for, like the man whose notice he once humbly courted, but to whom he was now opposed, he showed himself—

"A daring pilot in extremity,
Pleas'd with the danger when the waves ran high."

Being called into council, he recommended that the government should profess to credit the plot, and should outvie the other side in zeal for the Protestant religion,—but should contrive to make Shaftes-

* "'Well,' quoth Sir G., 'the Whigs may think me rude,
Or brand me guilty of ingratitude;
At my preferment they, poor fools, may grudge,
And think me fit for hangman more than Judge;
But though they fret, and bite their nails, and brawl,
I'll slight them, and go kiss dear *Nelly Wall.*'"[1]
Midsummer Moon.

"Monmouth's tamer, *Jeff's advance*,
Foe to England, spy to France,
False and foolish, proud and bold,
Ugly as you see, and old."
Duchess of Portsmouth's Picture.

[1] Said to have been Nelly's *maiden name.*

bury answerable for the reality of the conspiracy, so that, if hereafter it should blow up or the people should get tired of it, all that was done to punish the supposed authors of it might be laid to his account.

I cannot understand why he was not now brought into parliament, where his services were much wanted, and where one would have expected from his bold, ready, and sarcastic style of speaking, his success was certain. On the Exclusion Bill it might have been thought that his patron, the Duke of York, would have mainly relied upon him; and when Danby was impeached, that minister might well have availed himself of such a powerful advocate. Mr. Recorder had no longer a chance to be returned for the city of London, but most of the Cornish boroughs were then in the power of the government, and if there had been a difficulty in finding a seat for him near the conclusion of the parliament which had sat seventeen years, he might easily have been introduced in the two Westminster parliaments, and the Oxford parliament which followed. Yet Jeffreys remained [A.D. 1679.] the only lawyer of the 17th century, who took a prominent part in politics, and was never a member of the House of Commons.

Perhaps there were jealousies among the ministerialists in the House, which prevented his being permitted to join them, it being foreseen that he would immediately struggle for the lead; perhaps it was thought that the Court would be less benefited by his talents than damaged by his bad character, which was now notorious; and there might be a dread of his habit of intoxication, in which he occasionally indulged to great excess, and which might have led him in debate to divulge Cabinet secrets and have brought the administration into difficulties.

However this may be, we find that he immediately began diligently to work the Popish Plot according to his own scheme. Coleman, Whitbread, Ireland, and all whom Oates and Bedloe accused, being committed to prison,—it was resolved to prosecute them for high treason in having compassed the death of the King, as well as the overthrow of the Protestant religion,—and their trials were conducted by the government as state trials, partly at the bar of the Court of King's Bench, and partly at the Old Bailey. In the former, Jeffreys acted as a counsel, in the latter as a Judge.* It is asserted, and not improbably, that he had a real horror of popery, which, though he could control it in the presence of the Duke of York, and when his interest required, at other times burst out with sincerity as well as fierceness.

Scroggs presided at the Old Bailey,† but Jeffreys whetted his fury by telling him that the King was a thorough believer in the plot,‡ and

* 7 St. Tr. 6, 167, 312, 487, 609, 769, 842, 908, 959, 1050, 1081, 1208. 8 St. Tr. 128, 287, 301, 524, 573, 640, 653.

† St. Tr. vol. vii.

‡ As the name of this wretch is so often coupled with that of Jeffreys, it may be proper to give a short account of him. The story of his being the son of a butcher, though generally circulated and believed in his own time, was a fiction. He was the son of a private gentleman in Oxfordshire, and took a degree at the University; he was intended for the church, but in the civil war took arms for the King. He

by echoing his expressions; as, when the Chief Justice said to the jury, "You have done like honest men," he exclaimed, in a stage whisper, "They have done like honest men." As a mouthpiece of the Lord Mayor, the head of the Commission,—after conviction he had the pleasing duty of passing sentence of death by the protracted tortures which the law of treason prescribed. He said to Ireland, Grove, and Pickering, the Jesuits, "Thus I speak to you, gentlemen, not vauntingly; 'tis against my nature to insult upon persons in your sad condition: God forgive you for what you have done; and I do heartily beg it, though you don't desire I should: for, poor men! you may believe that your interest in the world to come is secured to you by your masses, but do well consider that vast eternity you must, ere long, enter into, and that great tribunal you must appear before, where masses will not signify so many groats to you; no, not one farthing. And I must say it, for the sake of those silly people whom you have imposed upon with such fallacies, that the masses can no more save you from future damnation than they do from a present condemnation. The sentence of the law is," &c.; and then came from his delighted lips the hurdle, the hanging, the cutting down alive, and other particulars too shocking to be repeated.*

was then called to the bar, and although he was exceedingly dissolute in his morals, and so much embarrassed, that when a Serjeant he was arrested for debt in Westminster Hall,—he was made, on account of his subserviency, first a Puisne Judge of the Common Pleas, and then Chief Justice of the Common Pleas. When he convicted the Popish conspirators with such zeal, he believed that the government was sincere in prosecuting them, and he was confirmed in this notion by seeing Shaftesbury taken into office; but when he was told that "the President of the Council had no more influence with the King than his footman," he threw cold water on the plot,—for which he was impeached. He was obliged to give up his office, but was allowed to die in peace. A few stanzas of a ballad then published upon him will show how he was regarded by his contemporaries:—

"A Butcher's son's Judge capital,
Poor Protestants to enthral,
And England to enslave, sirs;
Lose both our laws and lives we must,
When to do justice we intrust
So known an errant knave, sirs.

"His father once exempted was
Out of all juries; why, because
He was a man of blood, sirs;
And why the butcherly son (forsooth!)
Should now be Judge and Jury both,
Cannot be understood, sirs.

"The good old man with knife and knocks,
Made harmless sheep and stubborn ox
Stoop to him in his fury;
But the brib'd son, like greasy oaph,
Kneels down and worships golden calf,
And massacres the jury."

Justice in Masquerade.

* 7 St. Tr. 138.

He had a still greater treat in passing the like sentence on Richard Langhorn, an eminent Catholic barrister, with whom he had been familiarly acquainted. He first addressed generally the whole batch of the prisoners convicted,—whom he thus continues to upbraid for trying to root out "the best of religions;" "I call it the best of religions, even for your sakes; for had it not been for the sake of our religion, that teaches us not to make such requitals as yours seems to teach you, you had not had this fair, formal trial, but murder would have been returned to you for the murder you intended to commit both upon the King and most of his people. What a strange sort of religion is that whose doctrine seems to allow them to be the greatest saints in another world who have been the most impudent sinners in this! Murder and the blackest of crimes were the best means among you to get a man to be canonised a saint hereafter." Then he comes to his brother lawyer. "There is one gentleman that stands at the bar whom I am very sorry to see, with all my heart, in this condition, because of some acquaintance I have had with him heretofore. To see that a man who hath understanding in the law, and who hath arrived at so great an eminency in that profession as this gentleman hath done, should not remember that it is not only against the rules of Christianity, but even against the rules of his profession, to attempt any injury against the person of the King! He knows it is against all the rules of law to endeavour to introduce a foreign power into this land. So that you have sinned both against your conscience and your own certain knowledge." Last of all he offers his friend the assistance of a Protestant divine to prepare him for a speedy departure, and, referring him to the statute whereby the ministration of a Catholic priest is made [A. D. 1679.] illegal, he himself, though "a layman," gives him some "pious advice."—He had carried the sympathies of his audience along with him, for, when he had concluded with the "quartering," he was greeted with a loud shout of applause.*

Thus, by the powerful assistance of the Recorder, did the government obtain popularity for prosecuting the plot till the people at last actually did get tired of it, and Shaftesbury was prevented from deriving any fruit from it beyond the precarious tenure, for a few months, of his office of President of the Council.

The Recorder was equally zealous, on all other occasions, to do what he thought would be agreeable at Court. With the view of repressing public discussion, he laid down for law, as he said, on the authority of all the Judges, "that no person whatsoever could expose to the public knowledge any thing that concerned the affairs of the public without license from the King, or from such persons as he may think fit to intrust with that power."†

* 7 St. Tr. 487. After this, the story is credible which Sir Walter Scott used to tell of a Scotch Judge, who, having sentenced to death an old friend tried before him for murder, by whom he had often been beaten at chess, concluded by saying, "and now I think I have check-mated you!"

† 7 St. Tr. 929, 1124, 1127.

The Grand Jury having several times returned "*ignoramus*" to an indictment against one Smith for a libel, in respect of a very innocent publication, though they were sent out of Court to reconsider the finding, he at last exclaimed, "God bless me from such jurymen. I will see the face of every one of them, and let others see them also." He accordingly cleared the bar, and, calling the jurymen one by one, put the question to them, and made each of them repeat the word "ignoramus." He then went on another tack, and addressing the defendant, said, in a coaxing tone, "Come, Mr. Smith, there are two persons besides you whom this jury have brought in *ignoramus*; but they have been ingenuous enough to confess, and I cannot think to fine them little enough: they shall be fined two-pence for their ingenuity in confessing.

[A.D. 1679.] Well, come, Mr. Smith, we know who hath formerly owned both printing and publishing this book."—*Smith*. "Sir, my ingenuity hath sufficiently experienced the reward of your severity; and, besides, I know no law commands me to accuse myself; neither shall I; and the jury have done like true Englishmen and worthy citizens, and blessed be God for such a jury." Jeffreys was furious, but could only vent his rage by committing the defendant till he gave security for his good behaviour.

Such services were not to go unrewarded. It was the wish of the government to put the renegade Jeffreys into the office of Chief Justice of Chester, so often the price of political apostacy; but Sir Job Charlton, a very old gentleman, who now held it, could not be prevailed upon voluntarily to resign, for he had a considerable estate in the neighbourhood, and was loth to be stript of his dignity. Jeffreys, supported by the Duke of York, pressed the King hard, urging that "a Welshman ought not to judge his countrymen," and a message was sent to Sir Job that he was to be removed. He laid this heavily to heart, and desired only that he might speak to the King, and receive his pleasure from his own mouth; but was told that it was a thing resolved upon. Once, however, he went to Whitehall, and placed himself "like hermit poor," where the King returning from feeding his ducks in St. James's Park, must pass; but his Majesty was now so much ashamed of the affair, that, when he spied Sir Job, he turned short round and went another way.—The old gentleman was imperfectly consoled with the place of Puisne Judge of the Common Pleas, which in the reign of James II., he was subsequently allowed to exchange for his beloved Chester. Meanwhile he was succeeded by Jeffreys, "more Welshman than himself," who was at the same time made counsel for the Crown, at Ludlow, where a Court was still held for Wales.

Immediately afterwards the new Chief Justice was called to the

[APRIL 26, 1680.] degree of the Coif, and made King's Serjeant, whereby he had precedence in Westminster Hall of the Attorney and Solicitor-General. The motto on his rings, with great brevity and point, inculcated the prevailing doctrines of divine right and passive obedience—"A Deo Rex, a Rege Lex." As a further mark of royal favour, there was conferred upon him the here-

ditary dignity of a Baronet. He still retained the Recordership of London, and had extensive practice at the bar.

We have notices of a few important causes in which he was engaged as counsel. A new translation of the Psalms had been published under the title of "the King's Psalter," and the Stationers' Company applied to the King in Council to protect their property from invasion. Charles was present when the case came on to be heard, and thus was he addressed by the learned Recorder:—"They have teemed, Sir, with a spurious brat, which being clandestinely midwived into the world, the better to cover the imposture they lay it at your Majesty's door." We may know, from the introductory lines of "Absalom and Achitophel," that his Majesty was well pleased with any allusion, however public, to his gallantries. On the present occasion he whispered, "this is a bold fellow," and did not try to disguise his satisfaction. Jeffreys got a decree for his clients.

He was equally successful in an important suit he conducted in the King's Bench for the Duke of York, to whom the revenue of the post-office had been granted, and who had prosecuted a person of the name of Dockra for establishing "the penny post" in London for his own benefit. The Court decided that this was an infraction of the Duke's right. His Royal Highness therefore continued to have "the penny post" for the rest of this reign; and, from his own accession, it was under the immediate management of the Crown, the profits going into the public revenue.*

The great prosperity which Jeffreys now enjoyed had not the effect which it ought to have produced upon a good disposition,—by making him more courteous and kind to others. When not under the sordid restraint of injuring himself by offending superiors, he was universally insolent and overbearing. Being made Chief Justice of Chester, he thought that all puisne Judges were beneath him, and he would not behave to them with decent respect, even when practising before them. At the Kingston Assizes, Baron Weston having tried to check his irregularities, he complained that he was not treated like a counsellor, being curbed in the management of his brief.—*Weston*, B. "Sir George, since the King has thrust his favours upon you, and made you Chief Justice of Chester, you think to run down every body: if you find yourself aggrieved, make your complaint: here's nobody cares for you."—*Jeffreys*. "I have not been used to make complaints, but rather to stop those that are made."—*Weston*, B. "I desire, Sir, that you will sit down." He sat down, and is said to have wept with anger. His intemperate habits had so far shaken his nerves, that he shed tears very freely on any strong emotion.†

* Life of Guilford, ii. 99.

† The manner in which Jeffreys was regarded by the public at this time is very strikingly illustrated by an anonymous letter received by him, which had fallen into the hands of Sir Peter King, Recorder of London, afterwards Lord Chancellor, and is now preserved among the papers of the Earl of Lovelace. This effusion of malignity, like the famous letter of Mary to Elizabeth, which cost the Scottish queen her

We may be prepared for his playing some fantastic tricks before his countrymen at Chester, where he was subject to no control; but the description of his conduct there by Lord Delamere (afterwards Earl of

life, professes in a candid and friendly spirit to communicate the ill-natured things said of the party addressed:

"May it please your Lordship,—You were once counsel for me at a trial where you spake so brave and loud that we carried the cause, and I have loved you for it ever since;[1] and having an opportunity now to show it, I send you the following account, for it is useful for men who design to be great, to know what the people say of them. The other day I was at the election of the Sheriffs,[2] where one of my neighbours commended the former part of your speech exceedingly, and said your fellow servant Coleman's declaration was not better penned; yet he could not believe that the D. of York's solicitor could be very hearty in the Protestant religion. But he thought you a very proper man for the office you hold in the City, to be our mouth and lungs, when Sir Richard Clayton is our head, because now those parts are good in their kind. 'But I wonder,' continued he, 'that they two agree no better, for I am sure my Lady Jefferies the longest day she has to live cannot forget the kindness Miss Bludworth met with at his house one night.'[3] 'Aye, but,' says another, 'all Lord Mayors have an antipathy against him ever since he betrayed his client the Lord Mayor of York at the council table.' 'What you call a betraying,' said I, 'was but prevailing with his client to submit to the council board, who are in the wrong, and might appear to have the better on't. But for that and some other like services, he was lately made Chief Justice of Chester, and soon will be Attorney-General.' 'What is the manner of making an Attorney-General?' said my neighbour. I told him I thought it was by entering a form of words (as the City of London does at my Lord Mayor's day, in the Courts of Westminster Hall): *Dominus Rex ponit loco suo Georgium Jeffries*, &c. 'If that be all,' said a stander-by, 'Sir George has got that already, for that was the form of his marriage license.'[4] Whereat some of the company fell a laughing, but I cannot imagine why. However, I desired them to be civil and mannerly, and not to laugh at you whom they ought to respect, as being the mouth of the City. My neighbours presently snapt me up, and said that you were the 'foul mouth of the City,' and pointing to you on the hustings cried, 'That's our mountebank lawyer, and that you could no more make an argument at law than you could speak softly; and though you bragged that as long as Nelly Wall was the mistress, and the D[ss] of P. was her mistress and our master's mistress, you could have what you would at court;'[5] yet he said you were already come to the highest, and we should see you dwindle to nothing like your wife's jointure. I replied that he might be mistaken; we should live to see you Lord Chancellor, and then the lady would be sure to have a good jointure, and to have her train held up. 'I know,' said he, 'an addition to his wife's jointure would be very welcome, but for his coals they were taken up in her maiden days.' I was extremely vexed at that, but I thought it best not to stir in such a business, and 'tis no great matter what he says, for he is a rascal and a rebel,—a very fanatic, and in my next letter you shall know his name. In the mean time, I will be a spy for you at the Rainbow and the Amsterdam Coffee-houses, where the fanatics speak oftentimes very saucily of you. One of them told me a lie there t'other day, 'that my lady was b[t] to bed before her time, and that you reckoned without her host, and that you were the Bull and Moses of the City,' and said, 'when you come to be put in the pillory as Harris was, you will never be able to get your head out again.' But when we get them into the Crown Office, you and I will make them pay for all.[6]

[1] Satire on his bullying style of doing business at the bar.

[2] 24th June, 1680, when Jeffreys as Recorder conducted the proceedings.

[3] Alluding to some scandalous anecdote respecting his second wife, whose maiden name was *Bludworth*.

[4] Vide post an account of the lady's frailties.

[5] Vide ante, p. 395.

[6] A threatened prosecution for defamation in the Court of King's Bench.

Warrington), in denouncing it in the House of Commons, must surely be overcharged: "The county for which I serve is Cheshire, which is a county palatine; and we have two Judges peculiarly assigned us by his Majesty. Our puisne Judge I have nothing to say against; he is a very honest man, for aught I know; but I cannot be silent as to our chief Judge; and I will name him, because what I have to say will appear more probable. His name is Sir GEORGE JEFFREYS, who, I must say, behaved himself more like a Jack-pudding than with that gravity which becomes a Judge. He was witty upon the prisoners at the bar. He was very full of his jokes upon people that came to give evidence, not suffering them to declare what they had to say in their own way and method, but would interrupt them because they behaved themselves with more gravity than he. But I do not insist upon this, nor upon the late hours he kept up and down our city: it's said he was every night drinking till two o'clock, or beyond that time, and that he went to his chamber drunk; but this I have only by common fame, for I was not in his company, I bless God I am not a man of his principles and behaviour; but in the mornings he appeared with the symptoms of a man that overnight had taken a large cup. That which I have to say is the complaint of every man, especially of them that had any lawsuits. Our Chief Justice has a very arbitrary power in appointing the assize when he pleases, and this man has strained it to the highest point; for whereas we were accustomed to have two assizes, the first about April or May, the latter about September,—it was this year the middle (as I remember) of August before we had any assize; and then he despatched business so well that he left half the causes untried; and, to help the matter, has resolved we shall have no more assizes this year."*

After all this intelligence, pray take my advice, be patient: for the fretting and blowing is as improper to extinguish the fire that is now smoking all over the City, as the ——[1] was to blow out the great bonfire that Holy Catholic Church made in Pudding Lane.[2] And if you would but observe, the poor mad folks about the streets, the naughty boys don't use to follow them and call them names, unless like you they make a noise, and throw dirt. And be not so free of speech: that which you take to be your talent—speech-making, you love it, but it loves not you. It will have no better success than Scroggs's still prefaced apology in Wakeman's case,[3] which did no more clear his innocence than Pilate's speech did: that Scroggs fell short in this that he did not wash his hands. And all he said was largely and abundantly answered by Pemberton's saying nothing, who knew better than to believe him, and was better bred than to tell him he lied.

"I am,
Your Worship's humble Servant,
"A LIVERYMAN OF THE CITY OF LONDON.

"Cheapside, July 17th, 1680.
"To Sir George Jeffries the Recorder."

[1] Illegible.
[2] The fire of London, which began in *Pudding Lane* and ended in *Pie Corner*.
[3] Alluding to some proceedings lately instituted by Shaftesbury against his tool Scroggs.

* Wool. 66. Chandler's Debates, ii. 163.

Being tired of revelling in Chester, he put a sudden end to his first assize there, that he might pay a visit to his native place,—to which I am afraid he was less prompted by a pious wish to embrace his father, who had been so resolutely bent on making him a shop-keeper, and who, from the stories propagated about his conduct as a Judge, still expressed some misgivings about him,—as to dazzle his old companions with the splendour of his new state. Accordingly, he came with such a train that the cider-barrels at Acton ran very fast, and the larder was soon exhausted; whereupon, the old gentleman, in a great fret, charged his son with a design to ruin him, by bringing a whole country at his heels, and warned him against again attempting the same prodigality.

But a violent political storm now arose, which threatened entirely to overwhelm him, and from which he did not escape unhurt. In the struggle which arose from the long delay to assemble Parliament,* he had leagued himself strongly with the "Abhorrers" against the "Petitioners," and proceedings were instituted in the House of Commons on this ground, as well as against Chief Justice Scroggs and Chief Justice North.†

A petition from the City of London, very numerously signed, having been presented, complaining that the Recorder had obstructed the citizens in their attempts to have Parliament assembled for the redress of grievances, a select committee was appointed,—who, having heard evidence on the subject, and examined him in person, presented a report,—on which the following resolutions were passed:— [OCT. 27, 1680.]

"That Sir George Jeffreys, Recorder of the City of London, by traducing and obstructing petitioning for the sitting of this Parliament, hath destroyed the right of the subject.

"That an humble address be presented to his Majesty, to remove Sir George Jeffreys out of all public offices.

"That the members of this House serving for the City of London do communicate these resolutions to the Court of Aldermen for the said City."

The King was stanch, and returned for answer to the address the civil refusal "that he would consider of it;"‡ but Jeffreys, who, where he apprehended personal danger, was "none of the intrepids," quailed under the charge, and, afraid of farther steps being taken against him, came to an understanding that he should give up the Recordership, which his enemies wished to be conferred upon their partisan, Sir George Treby. The King was much chagrined at the loss of such a valuable Recorder, and said sarcastically that "he was not parliament proof." But he was obliged to acquiesce, and Jeffreys, having been reprimanded on his knees at the bar, was discharged. The address of

* Anté, p. 356, *et seq.*

† Burnet, in referring to these proceedings, says, "They fell also on Sir George Jeffries, *a furious declaimer at the bar.*"—Vol. ii. 121.

‡ "Le Roy s'avisera," the royal veto to a bill passed by the two Houses.

Speaker Williams was very bitter, and caused deep resentment in the mind of Jeffreys.* On the 2d of December he actually did resign his office, and Treby was chosen to succeed him.†

In a few days after took place one of Lord Shaftesbury's famous Protestant processions, on the anniversary of the accession of Queen Elizabeth.‡ In this rode a figure [Nov. 17, 1680.] on horseback to represent the Ex-recorder, with his face to the tail, and a label on his back—"I am an Abhorrer." At Temple Bar he was thrown into a bonfire, coupled with the Devil,—the preceding pair, who suffered the same fate, being Sir Roger L'Estrange and the Pope of Rome.§

However, all these indignities endeared him to the Court; and his pusillanimity was forgiven from the recollection of past, and the hope of future services. A petition from the City being presented to the King at Hampton Court, he attended as a liveryman, though no longer the mouth-piece of the corporation,—when he was treated with marked civility by Charles, and detained to dinner,—while the Lord Mayor and Aldermen, and the new Recorder, were sent off with a reprimand.

To oblige the Court, and to assist them in their criminal jobs, he accepted the appointment of Chairman of the Middlesex Sessions at Hicks's Hall; although it was somewhat beneath his dignity, and it deprived him of a portion of his practice.‖ Here the Grand Jury were sworn in; and as they were returned by Sheriffs whom the City of London elected, and who were still of the liberal party, the problem was to have them remodelled, so that they might find bills of indictment against all whom the government wished to prosecute. With this view, Jeffreys declared that none should serve except true Church of England men; and he ordered the under-sheriff to return a new panel purged of all sectarians. He had a particular spite against the Presbyterians, who had mainly contributed to his being turned out of the Recordership. The under-sheriff, disobeying his summons, he ordered the sheriffs to attend next day in person; but in their stead came the new Recorder, who urged that, by the privileges of the City of London, they were exempted from attending at Hicks's Hall. He overruled this claim with contempt, and fined the sheriffs 100*l*. It was found, however, that while the City retained the power of electing the sheriffs, all these attempts to pervert justice would be fruitless.¶

Jeffreys remained in a state of great anxiety during Charles's last Westminster parliament, and during the few days of the Oxford parliament. The popular party had such a majority in the House of Commons, and seemed so powerful, that it is said the renegade again expressed deep regret that he had left them: but late at night, on Mon-

* North's Life of Guilford, ii. 108. 4 Parl. Hist. 1216. Wool, 75.

† "On the second of Dec^r. Sir George Jeffreys, Knt., Serjeant-at-Law, Recorder of the city here present, did freely surrender up into this Court his place of Recorder, and all his right and interest therein, of which surrender the Court did accept and allow. George Treby, of the Middle Temple, London, Esq., was elected the same day."—*City Books.*

‡ Ante, p. 278. § Wool. 80. ‖ Ibid. 85. ¶ Ibid. 86.

day the 28th day of March, 1681, news arrived in London, that early that morning the King had dissolved the parliament, and had declared his firm determination never to call another. If Jeffreys was still sober, and got drunk that night, we ought to excuse him.

Now his talents were to be brought into full play. In the conflict, the ranks of the enemy being thrown into disorder, the brigade of the lawyers, who had been kept back as a reserve, was marched up to hang on their broken rear insulting, and to sweep them from the field.

First came on the trial of Fitzharris for high treason. Jeffreys, as [April, 1681.] counsel for the Crown, argued the demurrer to the plea of the pendency of the impeachment; and then, having assisted the Duchess of Portsmouth to evade the questions which were put to her, for the purpose of showing that the prisoner had acted under the King's orders, he addressed the Jury with great zeal after the Solicitor-General, and was mainly instrumental in obtaining the conviction.*

Next came the trial of Archbishop Plunket, the Roman Catholic [May, 1681.] Primate of Ireland; in which Jeffreys was so intemperate, that the Attorney-General was obliged to check him, that the prisoner might have some show of fair play.† But it was on the [Aug. 1681.] trial of College, "the Protestant joiner," that he gave the earliest specimen of his characteristic ribaldry, and his talent for jesting in cases of life and death, which shone out so con- [A. D. 1682.] spicuously when he was Lord Chief Justice of the King's Bench. He began with strongly justifying the act of taking from the prisoner the papers he was to use in his defence, saying, that to allow him to see them would be "assigning counsel to him with a vengeance." A witness having stated that pistols were found in the prisoner's holsters when he was attending the city members at Oxford, he exclaimed with a grin, "I think a chisel might have been more proper for a joiner."

There was called as a witness by the prisoner, one Lun, who being a waiter at the Devil Tavern and a fanatic, had some years before been caught on his knees praying against the Cavaliers, saying, "Scatter them, good Lord! Scatter them!"—from whence he had ever after borne the name of "Scatter'em." Jeffreys thus begins his cross-examination. "We know you, Mr. Lun; we only ask questions about you that the jury too may know you as well as we."—*Lun.* "I don't care to give evidence of any thing but the truth. *I was never on my knees before the parliament for any thing.*"—*Jeffreys.* "Nor I neither for much, yet you were once on your knees when you cried, *Scatter them, good Lord!* Was it not so, Mr. Scatter'em?"

He had next an encounter with the famous Titus Oates, who was called by College, and who, when cross-examined by him, appealed to Sir George Jeffreys's own knowledge of a fact, about which he was in-

* 8 St. Tr. 223. † Ibid. 447.

quiring.—*Jeffreys.* "Sir George Jeffreys does not intend to be on evidence, I assure you."—*Dr. Oates.* "I do not desire Sir George Jeffreys to be an evidence for me; I had credit in parliaments, and Sir George had disgrace in one of them."—*Jeffreys.* "Your servant, Doctor; you are a witty man and a philosopher."*—He had his full revenge when the Doctor himself was afterwards tried before him. [A. D. 1682.]

We may judge of the Councillor's general style of treating witnesses by his remark on the trial of Lord Grey de Werke for carrying off the Lady Henrietta Berkeley; when his objection was overruled to the competency of the young lady as a witness for the defendant, although she was not only of high rank and uncommon beauty, but undoubted veracity,—he observed, "Truly, my Lord, we would prevent perjury if we could."†

We now come to transactions which strikingly prove the innate baseness of his nature in the midst of his pretended openness and jolly good humour. He owed every thing in life to the Corporation of the City of London. The freemen, in the exercise of their ancient privileges, had raised him from the ground by electing him Common Serjeant and Recorder, and to the influence he was supposed to have in the Court of Common Council and in the Court of Aldermen must be ascribed his introduction to Whitehall, and all his political advancement. But when, upon the failure of the prosecution against Lord Shaftesbury, the free municipal constitution of the City became so odious to the government, he heartily entered into the conspiracy to destroy it. It is said, that he actually suggested the scheme of having a sheriff nominated by the Lord Mayor, and he certainly took a very active part in carrying it into execution. On Midsummer-day, having planted Lord Chief Justice North in his house in Aldermanbury that he might be backed by his authority, he himself appeared on the hustings in Guildhall, and when the poll was going against the Court candidates, illegally advised the Lord Mayor to dissolve the Hall, and afterwards to declare them duly elected. He did every thing in his power to push on and to assist the great *Quo Warranto*, by which the City was to be entirely disfranchised.

When success had crowned these efforts, and Pilkington and Shute, the former sheriffs, with Alderman Cornish and others, were to be tried before a packed jury for a riot at the election, finding that he had the game in his hand, his insolence knew no bounds. The defendants having challenged the array, on the ground that the sheriffs who returned the panel were not lawfully appointed,—as soon as the challenge was read, he exclaimed, "Here's a tale of a tub indeed!" The counsel for the defendants insisted that the challenge was good in law, and at great length argued for its validity.

Jeffreys. "Robin Hood
Upon Greendale stood!"

* 8 St. Tr. 405. † 9 St. Tr. 127.

Thompson, Counsel for the Defendants. "If the challenge be not good, there must be a defect in it either in point of law or in point of fact. I pray that the Crown may either demur or traverse."—*Jeffreys.* "This discourse is only for discourse sake. I pray the jury may be sworn."—*Lord Chief Justice Saunders,* "Ay, ay, swear the jury." The defendants were, of course, all found guilty, and as there were among them the most eminent of Jeffreys's old city friends, he exerted himself to the utmost not only in gaining a conviction, but in aggravating the sentence.*

But this was only a case of misdemeanour, in which he could ask for nothing beyond fine and imprisonment. He was soon to be engaged in prosecutions for high treason against the noblest of the land, in which his savage taste for blood might be gratified. The Ryehouse Plot broke [JULY 13, 1683.] out, for which there was some foundation, and after the conviction of those who had planned it, Lord Russell was brought to trial at the Old Bailey, on the ground that he had consented to it.

Jeffreys, in the late state trials, had gradually been encroaching on the Attorney and Solicitor-General, Sir Robert Sawyer and Sir Heneage Finch, and in Lord Russell's case, to which the government attached such infinite importance, he almost entirely superseded them. To account for his unexampled zeal, we must remember that the office of Chief Justice of the King's Bench was still vacant, Saunders having died a few months before, and Lord Keeper North having strongly opposed the appointment of Jeffreys as his successor.

Lord Russell had certainly been present at a meeting of the conspirators, [JULY, 1683.] when there was a consultation about seizing the King's guards; but he insisted that he came in accidentally, that he had taken no part in the conversation, and that he was not acquainted with their plans. The aspirant Chief Justice saw clearly where was the pinch of the case, and the Attorney-General, who was examining Colonel Rumsey, being contented with asking—"Was the prisoner at the bar present at the debate?" and receiving the answer "Yes," Jeffreys started up, took the witness into his own hands,—and calling upon him to draw the inference which was for the jury,—pinned the basket by this leading and highly irregular question,—"Did you find him averse to it or agreeing to it?" Having got the echoing answer which he suggested,—"agreeing to it," he looked round with exultation, and said,—"If my Lord Russell now pleases to ask any questions, he may!"

He addressed the jury in reply after the Solicitor-General had finished, and greatly outdid him in pressing the case against the prisoner, while he disclaimed with horror the endeavour to take away the life of the innocent.† He thus concluded:—"You have a Prince, and a merciful one too. Consider the life of your Prince, the life of his posterity, the

* 9 St. Tr. 187.

† "Jefferies would show his zeal and speak after him, but it was only an insolent declamation, such as all his were, full of fury and indecent invectives."—*Burnet,* ii. 216.

consequences that would have attended if this villany had taken place. What would have become of your lives and religion? What would have become of that religion we have been so fond of preserving? Gentlemen, I must put these things home upon your consciences. I know you will remember the horrid murder of the most pious Prince, the Martyr, King Charles I. Let not the greatness of any man corrupt you, but discharge your consciences both to God and the King, and to your posterity."*

Jeffreys had all the glory of the verdict of *Guilty*, and as the Lord Chief Justice Pemberton had rather flinched during this trial, and the Attorney and Solicitor General were thought men who would cry CRAVEN, and as the next case was not less important, and still more ticklish, all objections to the proposed elevation of the favourite vanished, and he became Chief Justice of England, as the only man fit to condemn Algernon Sydney.†

CHAPTER C.

CONTINUATION OF THE LIFE OF LORD CHANCELLOR JEFFREYS TILL HE RECEIVED THE GREAT SEAL.

THE new Chief Justice was sworn in on the 29th of September, 1683, and took his seat in the Court of King's Bench on the first day of the following Michaelmas term.‡

Sydney's case was immediately brought on before him in this Court, the indictment being removed by *certiorari* from the Old Bailey, that it might be under his peculiar care. [Nov. 7, 1683.] The prisoner wishing to plead some collateral matter, was told by the Chief Justice, that if overruled, sentence of death would immediately be passed upon him. Though there can be no doubt of the illegality of the conviction, the charge against [Nov. 21, 1683.] Jeffreys is unfounded, that he admitted the MS. treatise on government to be read without any evidence of its having been written by the pri-

* 9 St. Tr. 654.

† Evelyn, Oct. 4, 1683. "Sir Geo. Jefferies was advanced, reputed to be most ignorant, but most daring." This is the very day on which the diarist saw "the Duchess of Portsmouth in her dressing-room within her bed-chamber in her morning loose garment, her maids combing her, newly out of bed, his Majesty and the gallants standing about her."

‡ We learn from Burnet the impression made by this appointment on the public mind. "All people were apprehensive of very black designs, when they saw Jefferies made Lord Chief Justice, who was scandalously vicious and was drunk every day; besides a drunkenness of fury in his temper that looked like enthusiasm. He did not consider the decencies of his post; nor did he so much as affect to seem impartial as became a Judge: but ran out upon all occasions into declamations that did not become the bar, much less the bench."—*Own Times*, ii. 231.

soner, beyond "similitude of hands." Two witnesses, who were acquainted with his handwriting from having seen him indorse bills of exchange, swore that they believed it to be his handwriting, and they were corroborated by a third, who, with his privity, had paid notes purporting to be indorsed by him without any complaint ever being made. But the undeniable and ineffaceable atrocity of the case was the Lord Chief Justice's doctrine, that "*scribere est agere*," and that therefore this MS. containing some abstract speculations on different forms of government written many years before, never shown to any human being, and containing nothing beyond the constitutional principles of Locke and Paley, was tantamount to the evidence of a witness to prove an overt act of high treason. "If you believe that this was Colonel Sydney's book, writ by him, no man can doubt that it is a sufficient evidence that he is guilty of compassing and imagining the death of the King. It fixes the whole power in the parliament and the people. The King, it says, is responsible to them; the King is but their trustee. Gentlemen, I must tell you I think I ought more than ordinarily to press this upon you, because I know the misfortune of the late unhappy rebellion, and the bringing of the late blessed King to the scaffold, was first begun with such kind of principles. They cried that he had betrayed the trust that was delegated to him by the people, so that the case rests not upon two but upon greater evidence than twenty-two witnesses, if you believe this book was writ by him."

The Chief Justice having had the satisfaction of pronouncing with his own lips the sentence upon Sydney, of death and mutilation, instead of leaving the task as usual to the senior puisne Judge,—a scene followed which is familiar to every one.—*Sydney*. "Then, O God! O God! I beseech thee to sanctify these sufferings unto me, and impute not my blood to the country; let no inquisition be made for it,—but if any,—and the shedding of blood that is innocent must be revenged,—let the weight of it fall only upon those that maliciously persecute me for righteousness sake."—*Lord C. J. Jeffreys*. "I pray God work in you a temper fit to go unto the other world, for I see you are not fit for this."—*Sydney*. "My Lord, feel my pulse [holding out his hand], and see if I am disordered. I bless God I never was in better temper than I now am."—By order of the Chief Justice, the lieutenant of the Tower immediately removed the prisoner.

A very few days after, and while this illustrious patriot was still lying under sentence of death,* the Lord Chief Justice Jeffreys and Mr. Justice Withins, who sat as his brother Judge on the trial, went to a gay city wedding, where the Lord Mayor and other grandees were present. Evelyn, who was of the party, tells us that the Chief and the puisne both "danced with the bride, and were exceeding merry." He adds, "These great men spent the rest of the afternoon until eleven at night in drinking healths, taking tobacco, and talking much beneath the gravity of Judges, who had but a day or two before condemned Mr. Algernon Sydney."†

* 5th Dec. † Mem. 530.

The next exhibition in the Court of King's Bench which particularly pleased Jeffreys and horrified the public, was the condemnation of Sir Thomas Armstrong. It will be re- [JUNE 14, 1684.] collected that this gentleman was outlawed while beyond the seas, and being sent from Holland within the year, sought, according to his clear right in law, to reverse the outlawry.* I have had occasion to reprobate the conduct of Lord Keeper North in refusing him his writ of error, and suffering his execution; but Jeffreys may be considered the executioner. When brought up to the King's Bench bar, Armstrong was attended by his daughter, a most beautiful and interesting young woman, who, when the Chief Justice had illegally overruled the plea, and pronounced judgment of death under the outlawry, exclaimed, "My Lord, I hope you will not murder my father."—*Chief Justice Jeffreys.* "Who is this woman? Marshal, take her into custody. Why, how now? Because your relative is attainted for high treason, must you take upon you to tax the Courts of justice for murder when we grant execution according to law? Take her away."—*Daughter.* "God Almighty's judgments light upon you."—*Chief Justice Jeffreys.* "God Almighty's judgments will light upon those that are guilty of high treason."—*Daughter.* "Amen. I pray God."—*Chief Justice Jeffreys.* "So say I. I thank God I am clamour proof." [The daughter is committed to prison, and carried off in custody.]—*Sir Thomas Armstrong.* "I ought to have the benefit of the law, and I demand no more."—*Chief Justice Jeffreys.* "That you shall have, by the grace of God. See that execution be done on Friday next, according to law. You shall have the full benefit of the law!!!" Armstrong was hanged, embowelled, beheaded, and quartered accordingly.

When Jeffreys came to the King at Windsor soon after this trial, "the King took a ring of good value from his finger and [A.D. 1684.] gave it to him for these services. The ring upon that was called his *blood-stone*."†—In the reign of William and Mary, Armstrong's attainder was reversed. Jeffreys was then out of reach of process, but for the share which Sir Robert Sawyer had in it as Attorney-General, he was expelled the House of Commons.‡

Jeffreys had now the satisfaction of causing an information to be filed against Sir William Williams for having, as Speaker of the House of Commons, under the orders of the House, directed the printing of "Dangerfield's Narrative,"—the vengeful tyrant thus dealing a blow at once to an old enemy who had reprimanded him on his knees, and to the privileges of the House, equally the object of his detestation. He was in hopes of deciding the case himself, but he left it as a legacy to

* Stat. 6 Ed. 6 enacted that if any outlaw yielded himself to the Chief Justice, &c. within a year, he should be discharged of the outlawry, and entitled to a jury.

† Burn. own Times, i. 580. "The King accompanied the gift with a piece of advice somewhat extraordinary from a King to a Judge: '*My Lord, as it is a hot summer, and you are going the circuit, I desire you will not drink too much.*'"

‡ 10 St. Tr. 105. See a beautiful reference to this case by Lord Erskine, in defending Hardy.—24 *St. Tr.* 944.

his successor, Chief Justice Herbert, who, under his auspices, at once overruled the plea, and fined the defendant 10,000*l.**

Not only was Jeffreys a Privy Councillor, but he had become a member of the Cabinet, where, from his superior boldness and energy, as well as his more agreeable manners, he had gained a complete victory over Lord Keeper North, whom he denounced as a "Trimmer,"—and the Great Seal seemed almost within his grasp.† To secure it, he still strove to do every thing he could devise to please the Court, as if hitherto nothing base had been done by him.‡ When, to his great joy, final judgment was entered up against the City of London on the *quo warranto*, he undertook to get all the considerable towns in England to surrender their charters on the threat of similar proceedings; and with this view, in the autumn of 1684, he made "a campaign in the North," which was almost as fatal to corporations as that "in the West," the following year, proved to the lives of men. To show to the public the special credit he enjoyed at Court, the London Gazette, just before he set out, in reference to the gift bestowed upon him for the judgment against Sir Thomas Armstrong, announced "that his Majesty, as a mark of his royal favour, had taken a ring from his own finger and placed it on that of Lord Chief Justice Jeffreys." In consequence, although when on the circuit he forgot the caution against hard drinking, with which the gift had been accompanied, he carried every thing before him,—"charters fell like the walls of Jericho,"§ and he returned laden with his hyperborean spoils.

[A.D. 1684.]

I have already related the clutch at the Great Seal which he then made, and his temporary disappointment.‖ He was contented to "bide his time." There were only other two occasions when he had it in his power to pervert the law, for the purpose of pleasing the Court, during the present reign. The first was, on the trial of Hampden, the grandson of the great Hampden, for a trifling misdemeanour. Although this young gentleman was only heir apparent to a moderate estate, and not in possession of any property, he was sentenced to pay a fine of 40,000*l.*,—Jeffreys saying that the clause in MAGNA CHARTA, "Liber homo non amercietur pro magno delicto nisi salvo contenemento suo," does not apply to fines imposed by the King's Judges.¶—The other was the inquisition in the action of *scan. mag.* brought by the Duke of York against Titus Oates, in which the jury, under his direction, awarded 100,000*l.* damages.**

* 13 St. Tr. 1436. 2 Shower, 471. Lord Campbell's Speeches, 284.

† For the disputes between them, see *ante*, p. 373.

‡ ——— "In omnia præceps,
Nil actum credens, dum quid superesset agendum,
Instat atrox."

§ Wool. 103, 104. ‖ Ante, p. 374. ¶ 9 St. Tr. 1125.

** 10 St. Tr. 125. It is curious to observe, that in this case, after judgment by default, the inquisition being before the Court of King's Bench *in banco*, the Sheriffs of Middlesex attending in person, sat covered before the Judges, and the counsel began their speeches, 'May it please your Lordships, you Mr. Sheriffs, and gentlemen of the Jury."

Ever since the disfranchisement of the city of London, the Ex-recorder had ruled it with a rod of iron. He set up a nominal Lord Mayor and nominal Aldermen; but, as they were entirely dependent upon him, he treated them with continual insolence.*

On the sudden death of Charles II., Jeffreys no doubt thought the period was arrived when he must be rewarded for the peculiar zeal with which he had abandoned himself to the [FEB. 1685.] service of the successor; but he was at first disappointed, and he had still to "wade through slaughter" to the seat he so much coveted.

Not dismayed, he resolved to act on two principles: 1st, If possible, to outdo himself in pleasing his master, whose arbitrary and cruel disposition became more apparent from the hour that he mounted the throne. 2dly, To leave no effort untried to discredit, disgrace, disgust, and break the heart of the man who stood between him and his object.

Being confirmed in the office of Chief Justice of the King's Bench, he began with the trial for perjury of Titus Oates,—whose veracity he had often maintained, but with whom he had [MAY 1, 1685.] a personal quarrel, and whom he now held up to reprobation,—depriving him of all chance of acquittal. The defendant was found guilty on two indictments, and the verdict on both was probably correct; but what is to be said for the sentence? [MAY 5, 1685.] "To pay on each indictment a fine of 1,000 marks; to be stript of all his canonical habits; to be imprisoned for life; to stand in the pillory on the following Monday, with a paper over his head, declaring his crime; next day to stand in the pillory at the Royal Exchange, with the same inscription; on the Wednesday to be whipped from Aldgate to Newgate; on the Friday to be whipped from Newgate to Tyburn; upon the 24th of April in every year, during life, to stand in the pillory at Tyburn opposite the gallows; on the 9th of August in every year to stand in the pillory opposite Westminster Hall Gate; on the 10th of August in every year to stand in the pillory at Charing Cross; and the like on the following day at Temple Bar; and the like on the 2d of September, every year, at the Royal Exchange;"—the Court expressing deep regret that they could not do more, as they would "not have been unwilling to have given judgment of death upon him."†

Next came the trial of Richard Baxter, the pious and learned Presbyterian divine, who had actually said, and adhered to the saying, "Nolo episcopari," and who was now prosecuted [A. D. 1685.] for a libel, because in a book on church government, he had reflected on the Church of Rome in words which might possibly be applied to the Bishops of the Church of England. No such reference was intended

* Sir John Reresby, giving an account of his dining with Sir James Smith, the Lord Mayor, says: "This gentleman complained to me that he enjoyed no more than the bare title of Lord Mayor, the Lord Chief Justice Jeffries usurping the power; that the City had no sort of intercourse with the King but by the intervention of that Lord, and that himself and the aldermen were looked upon by the Court as no better than his tools; that upon all occasions his Lordship was so forgetful of the high dignity of the City, as to use him and his brethren with contempt."—*Reresb. Mem.* 207.

† 10 St. Tr. 1315.

by him; and he was known not only to be of exemplary private character, but to be warmly attached to monarchy, and always inclined to moderate measures in the differences between the established church and those of his own persuasion.* Yet, when he pleaded *not guilty*, and prayed on account of ill health, that his trial might be postponed, Jeffreys exclaimed, "Not a minute more to save his life. We have had to do with other sort of persons, but now we have a Saint to deal with; and I know how to deal with Saints as well as Sinners. Yonder stands Oates in the pillory, [Oates was at that moment suffering part of his sentence in Palace Yard, outside the great gate of Westminster Hall,] and he says he suffers for the truth; and so says Baxter; but if Baxter did but stand on the outside of the pillory with him, I would say *two of the greatest rogues and rascals in the kingdom stood there together*." Having silenced the defendant's counsel by almost incredible rudeness, the defendant himself wished to speak, when the Chief Justice burst out, "Richard, Richard, thou art an old fellow and an old knave; thou hast written books enough to load a cart; every one is as full of sedition, I might say treason, as an egg is full of meat; hadst thou been whipt out of thy writing trade forty years ago, it had been happy. Thou pretendest to be a preacher of the gospel of peace, and thou hast one foot in the grave; it is time for thee to begin to think what account thou intendest to give; but leave thee to thyself, and I see thou wilt go on as thou hast begun; but, by the grace of God, I'll look after thee. Gentlemen of the jury, he is now modest enough; but time was when no man was so ready at *Bind your Kings in chains, and your nobles in fetters of iron*, crying *To your tents, O Israel!* Gentlemen, for God's sake do not let us be gulled twice in an age." The defendant was, of course, found guilty, and thought himself lucky to escape with a fine of 500*l.* and giving security for his good behaviour for seven years.†

The Lord Chief Justice, for his own demerits, and to thrust a thorn into the side of Lord Keeper Guilford, was now raised to the peerage by the title of "Baron Jeffreys of Wem,"—the preamble of his patent narrating his former promotions—averring that they were the reward of virtue,—and after the statement of his being appointed to preside in the Court of King's Bench, adding, "ubi etiamnum justitiam et tutelam subditis nostris ad normam legis intrepide et fideliter administrans: quarum ejus virtutum intuitu eum inter pares hujus regni cooptandum esse censuimus," &c. [MAY 15, 1685.]

He took his seat in the House of Lords on the first day of the meeting of James's only parliament, along with nineteen others either raised in the peerage or newly created since the dissolution of the Oxford Parliament,—the junior being John Lord Churchill, afterwards Duke of Marlborough. The Journals show that Lord Jeffreys was very regular in his attendance during the session, and as the House sat daily and still met at the same early hour as the Courts of law, he must generally have left the business of the King's [MAY 19, 1685.]

* Fox's Hist. James, ii. 96.

† 11 St. Tr. 495. 3 Mod. Rep. 68.

Bench to be transacted by the other Judges. He was now occupied day and night with plans for pushing the already disgraced Lord Keeper from the woolsack.

I have already, in the life of Lord Guilford, related how these plans were conducted in the Cabinet, in the royal circle at Whitehall, and in the House of Lords,—particularly the savage treatment which the "staggering statesman" received on the reversal of his decree in *Howard* v. *Duke of Norfolk*, after which he never held up his head more.* The probability is, that although he clung to office so pusillanimously in the midst of all sorts of slights and indignities, he would now have been forcibly ejected if his death had not appeared to be near at hand, and if there had not been a demand for the services of "Judge Jeffreys" in a scene very different from the drowsy tranquillity of the Court of Chancery. [A.D. 1685.]

By the month of July, Monmouth's rebellion had been put down, and he himself had been executed upon his parliamentary attainder without the trouble of a trial; but all the jails in the west of England were crowded with his adherents, and, instead of Colonel Kirke doing military execution on more of them than had already suffered from his "Lambs," it was resolved that they should all perish by the flaming sword of justice,—which, on such an occasion, there was only one man fit to wield.

No assizes had been held this summer on the Western circuit; but for all the counties upon it a special Commission to try criminals was now appointed,—at the head of which Lord Chief Justice Jeffreys was put;—and, by a second Commission, he, singly, was invested with the authority of Commander-in-Chief over all his Majesty's forces within the same limits.†

On entering Hampshire he was met by a brigade of soldiers, by whom he was guarded to Winchester. During the rest of his progress he never moved without a military escort;—he daily gave the word;—orders for going the rounds, and for the general disposal of the troops were dictated by him,—sentinels mounting guard at his lodgings, and the officers on duty sending him their reports.

I desire at once to save my readers from the apprehension that I am about to shock their humane feelings by a detailed statement of the atrocities of this bloody campaign in the West, the character of which is familiar to every Englishman. But, as a specimen of it, I must present

* Ante, p. 377, *et seq.* From the slight passed upon the Lord Guilford at the opening of the session, and the elevation of Jeffreys to the peerage, a speedy transfer of the Great Seal seems to have been generally anticipated. Evelyn, in his Memoirs under May 22, 1685, after giving an account of the meeting of parliament, thus proceeds: "There was no speech made by the Lord Keeper after his Majesty as usual. It was whispered he would not be long in that situation, and many believe the bold Chief Justice Jefferies, who was made Baron of Wem, in Shropshire, and who went thurrough stitch in that tribunal, stands fair for that office. I gave him joy the morning before of his new honour, he having been always very civil to me."

† There is preserved in the War Office an order dated 24th August, 1685, for furnishing horse and foot at his request.

a short account of the treatment experienced by Lady Lisle, with whose murder it commenced.

She was the widow of Major Lisle, who had sat in judgment on [Aug. 27, 1685.] Charles I., had been a Lord Commissioner of the Great Seal under Cromwell, and, flying on the restoration, had been assassinated at Lausanne.* She remained in England, and was remarkable for her loyalty as well as piety. Jeffreys's malignant spite against her is wholly inexplicable; for he had never had any personal quarrel with her, she did not stand in the way of his promotion, and the circumstance of her being the widow of a regicide cannot account for his vindictiveness. Perhaps, without any personal dislike to the individual, he merely wished to strike terror into the West by his first operation.

The charge against her, which was laid capitally, was that after the battle of Sedgemoor she had harboured in her house one Hickes, who had been in arms with the Duke of Monmouth,—*she knowing of his treason.*† In truth she had received him into her house,—thinking merely that he was persecuted as a non-conformist minister, and the moment she knew whence he came, she (conveying to him a hint that he should escape) sent her servant to a justice of peace to give information concerning him. There was the greatest difficulty even to show that Hickes had been in the rebellion, and the Judge was worked up to a pitch of fury by being obliged himself to cross-examine a Presbyterian witness, who had showed a leaning against the prosecution. But the principal traitor had not been convicted, and there was not a particle of evidence to show the *scienter*, *i. e.* that the supposed accomplice, at the time of the harbouring, was acquainted with the treason. Not allowed the benefit of counsel, she herself, prompted by natural good sense, took the legal objection that the principal traitor ought first to have been convicted, "because, peradventure, he might afterwards be acquitted as innocent after she had been condemned for harbouring him;" and she urged with great force to the jury, "that at the time of the alleged offence she had been entirely ignorant of any suspicion of Hickes having partici- [A.D. 1685.] pated in the rebellion; that she had strongly disapproved of it, and that she had sent her only son into the field to fight under the royal banner to suppress it."

It is said by almost all the contemporary authorities, that thrice did the Jury refuse to find a verdict of *guilty*, and thrice did Lord Chief Justice Jeffreys send them back to reconsider their verdict.‡ In the account of the proceeding in the State Trials, which has the appearance of having been taken in short-hand, and of being authentic,

* Ante, p. 75, *et seq.*

† Another person of the name of Nelthorp was mentioned in the indictment; but with respect to him there was not the shadow of a case made out in evidence.—11 *St. Tr.* 297.

‡ See Coke's Detection, ii. 1719. Kennet, iii. 433. Rapin, v. 750. Oldmixon, i. 706. Echard, 1068. Ralph, i. 889.

the repeated sending back of the Jury is not mentioned; but enough appears to stamp eternal infamy on Jeffreys, if there were nothing more extant against him. After a most furious summing up, "the Jury withdrew, and staying out awhile, the Lord Jeffreys expressed a great deal of impatience, and said he wondered that in so plain a case they would go from the bar, and would have sent for them, with an intimation that, if they did not come quickly, he would adjourn, and let them lie by it all night; but, after about half an hour's stay, the Jury returned, and the foreman addressed himself to the Court thus: 'My Lord, we have one thing to beg of your Lordship some directions in before we can give our verdict: we have some doubt whether there be sufficient evidence that she knew Hickes to have been in the army.' —*L. C. J.* 'There is as full proof as proof can be; but you are judges of the proof; for my part I thought there was no difficulty in it.'—*Foreman.* 'My Lord, we are in some doubt of it.'—*L. C. J.* 'I cannot help your doubts: was there not proved a discourse of the battle and the army at supper time?'—*Foreman.* 'But, my Lord, we are not satisfied that she had notice that Hickes was in the army.'—*L. C. J.* 'I cannot tell what would satisfy you. Did she not inquire of Dunne whether Hickes had been in the army? and when he told her he did not know, she did not say she would refuse him if he had been there, but ordered him to come by night, by which it is evident she suspected it. . . . But if there were no such proof, the circumstances and management of the thing is as full a proof as can be. I wonder what it is you doubt of.' *Lady Lisle.* 'My Lord, I hope ——' —*L. C. J.* 'You must not speak now.'—The Jury laid their heads together near a quarter of an hour, and then pronounced a verdict of *Guilty.*—*L. C. J.* 'Gentlemen, I did not think I should have had any occasion to speak after your verdict; but, finding some hesitancy and doubt among you, I cannot but say I wonder it should come about; for I think in my conscience the evidence was as full and plain as could be, and if I had been among you, and she had been my own mother, I should have found her guilty.'"

[A.D. 1685.]

He passed sentence upon her with great *sang froid*, and, I really believe, would have done the same had she been the mother that bore him, "That you be conveyed from hence to the place from whence you came, and from thence you are to be drawn on a hurdle to the place of execution, where your body is to be burnt alive till you be dead. And the Lord have mercy on your soul."

The King refused the most earnest applications to save her life, saying that he had promised Lord Chief Justice Jeffreys not to pardon her; but, by a mild exercise of the prerogative, he changed the punishment of burning into that of beheading,—which she actually underwent. After the revolution her attainder was reversed by act of parliament, on the ground that "the verdict was injuriously extorted by the menaces and violence and other illegal practices of George Lord

Jeffreys, Baron of Wem, then Lord Chief Justice of the King's Bench."*

From Winchester the "Lord General Judge" proceeded to Salisbury, [Sept. 1, 1685.] where he was obliged to content himself with whippings and imprisonments for indiscreet words, the Wiltshire men not having actually joined in the insurrection. But when he got into Dorsetshire, the county in which Monmouth had landed, and where many had joined his standard, he was fatigued, if not satiated, with shedding blood. Great alarm was excited, and not without reason, [Sept. 5, 1685.] by his being seen to laugh in church, both during the prayers and sermon which preceded the commencement of business in the Hall,—his smile being construed into a sign that he was about "to breathe death like a destroying angel, and to sanguine his very ermine in blood."† His charge to the Grand Jury threw the whole county into a state of consternation; for he said he was determined to exercise the utmost rigour of the law, not only against principal traitors, but all aiders and abettors, who, by any expression, had encouraged the rebellion, or had favoured the escape of any engaged in it, however nearly related to them,—unless it were the harbouring of a husband by a wife, which the wisdom of our ancestors permitted because she had sworn to obey him.

Bills of indictment for high treason were found by the hundred, often without evidence, the Grand Jury being afraid that, if they were at all scrupulous, they themselves might be brought in "aiders and abetters." It happened, curiously enough, that as he was about to arraign the prisoners, he received news, by express, that the Lord Keeper Guilford had breathed his last at Wroxton, in Oxfordshire. He had little doubt that he should himself be the successor, and very soon after, by a messenger from Windsor, he received assurances to that effect, with orders "to finish the King's business in the West." He had no ground for serious misgivings, but he could not but feel a little uneasy at the thought of the intrigues which in his absence might spring up against him in a corrupt Court, and he was impatient to take possession of his new dignity. But what a prospect before him, if all the prisoners against whom their might be indictments, here and at other places, should plead "not guilty," and *seriatim* take their trials! He resorted to an expedient worthy of his genius by openly proclaiming, in terms of vague promise but certain denunciation, that "if any of those indicted would relent from their conspiracies, and plead *guilty*, they should find him to be a merciful Judge; but that those who put themselves on their trials, (which the law mercifully gave them all, in strictness, a right to do,) if [A.D. 1685.] found guilty, would have very little time to live; and, therefore, that such as were conscious they had no defence, had better spare him the trouble of trying them."‡

* 11 St. Tr. 381. Stat. 1 W. & M. † Wool. 200.

‡ "He bid 'um to confess, if e'er they hope
To be reprieved from the fatal rope:

He was at first disappointed. The prisoners knew the sternness of the Judge, and had some hope from the mercy of their countrymen on the Jury. The result of this boldness is soon told. He began on a Saturday morning, with a batch of thirty. Of these only one was acquitted for want of evidence, and the same evening he signed a warrant to hang thirteen of those convicted on the Monday morning, and the rest the following day. An impressive defence was made by the constable of Chardstock, charged with supplying the Duke of Monmouth's soldiers with money,—whereas they had actually robbed him of a considerable sum, which he had in his hands for the use of the militia. The prisoner having objected to the competency of a witness called against him. "Villain! Rebel!" exclaimed the Judge, "methinks I see thee already with a halter about thy neck." And he was specially ordered to be hanged the first,—my Lord jeeringly declaring, "that if any with a knowledge of the law came in his way, he should take care to *prefer them!*"

On the Monday morning, the Court sitting rather late on account of the executions, the Judge, on taking his place, found many applications to withdraw the plea of *Not guilty*, and the prisoners pleaded *Guilty* in great numbers; but his ire was kindled, and he would not even affect any semblance of mercy. Two hundred and ninety-two more received judgment to die, and of these seventy-four actually suffered,—some being sent to be executed in every town, and almost in every village, for many miles round. The whole county [A.D. 1685.] was covered with the gibbeted quarters of human beings, and to this day the memory is still fresh of the horror then created. There are innumerable anecdotes of his brutality, and some of his venality on applications for pardon; but many of them do not rest on any certain authority, and some of them were probably invented to blacken his memory.

He next proceeded to Exeter, where one John Foweracres, the first prisoner arraigned, had the temerity to plead *Not guilty*, and being speedily convicted, was sent to instant execution. This had the desired effect; for all the others confessed, and the Judge was saved the trouble of trying them. Only thirty-seven suffered capitally in the county of

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This seem'd a favour, but he'd none forgive:
The favour was a day or two to live,—
Which those had not that troubled him with tryal,
His business blood, and would have no denyal.
Two hundred he could sentence in an hour," &c.

Jeffreys's Elegy.

"The prisoners to plead to his Lordship did cry,
But still he made answer and thus did reply:
'We'll hang you up first, and then after we'll try.'
Sing hey, brave Chancellor! O fine Chancellor!
Delicate Chancellor, O!"

Song on Chancellor Jeffreys, to the tune of "Hey brave Popery."

See 11 St. Tr. 302. Wool. 203.

Devon, the rest of the two hundred and forty-three against whom indictments were found being transported, whipped, or imprisoned.

Somersetshire afforded a much finer field for indulging the propensities of the Chief Justice, as in this county there had not only been a considerable rising of armed men for Monmouth, but processions,—in which women and children had joined, carrying ribands, boughs, and garlands to his honour. There were five hundred prisoners for trial at Taunton alone. Jeffreys said in his charge to the Grand Jury, "it would not be his fault if he did not purify the place." The first person tried before him here was Simon Hamling, a dissenter of a class to whom the Judge had a particular enmity. In reality, the accused had only come to Taunton, during the rebellion, to warn his son, who resided there, to remain neuter. Conscious of his innocence, he insisted on pleading *not guilty;* he called witnesses, and made a resolute defence,—which was considered great presumption. The committing magistrate, who was sitting on the bench, at last interposed, and said "there must certainly be some mistake about the individual."—*Jeffreys.* "You have brought him here, and, if he be innocent, his blood be upon your head." The prisoner was found guilty, and ordered for execution next morning. Few afterwards gave his Lordship the trouble of trying [A.D. 1685.] them, and one hundred and forty-three are said here to have been ordered for execution, and two hundred and eighty-four to have been sentenced to transportation for life. He particularly piqued himself upon his *bon mot* in passing sentence on one Hucher, who pleaded, in mitigation, that, though he had joined the Duke of Monmouth, he had sent important information to the King's general, the Earl of Feversham. "You deserve a double death," said the impartial Judge;—"one for rebelling against your Sovereign, and the other for betraying your friends."*

He showed great ingenuity in revenging himself upon such as betrayed any disapprobation of his severities. Among these was Lord Stawell, a cavalier noble in those parts, who was so much shocked with what he had heard of the Chief Justice, that he refused to see him. Immediately after, there came forth an order that Colonel Bovet, of Taunton, a gentleman with whom he had been well acquainted, should be executed at Cotheleston, close by the house where he and Lady Stawell and his children then resided.

A considerable harvest here arose from compositions levied upon the friends of twenty-six young virgins who presented the invader with colours, which they had embroidered with their own hands. The fund was ostensibly for the benefit of "the Queen's maids of honour," but a strong suspicion arose that the Chief Justice participated in bribes for these and other pardons.

The jails at Taunton, being incapable of containing all the prisoners, it was necessary to adjourn the Commission to Wells, where the same horrible scenes were again acted, notwithstanding the humane exertions

* Toulmin's History of Taunton, 162, 529.

of that most honourable man, Bishop Ken, who afterwards, having been one of the seven Bishops prosecuted by King James, resigned his see at the Revolution, rather than sign the new tests.

The Cornishmen had all remained loyal, and the city of Bristol only remained to be visited by the Commission. There were not many cases of treason here, but Jeffreys had a particular spite against the Corporation magistrates, because they were supposed to favour dissenters, and he had them very much in his power by a discovery he made, that they had been in the habit of having in turn assigned to them prisoners charged with felony, whom they sold [A. D. 1685.] for their own benefit to be transported to Barbadoes. In addressing the Grand Jury, (while he complained of a fit of the stone, and was seemingly under the excitement of liquor,) he said, "I find a special Commission is an unusual thing here, and relishes very ill; nay, the very women storm at it, for fear we should take the upper hand of them too: for by-the-by, Gentlemen, I hear it is much in fashion in this city for the women to govern and bear sway." Having praised the mild and paternal rule of King James, he thus proceeded,—"On the other hand, up starts a puppet Prince who seduces the mobile into rebellion, into which they are easily bewitched; for I say, rebellion is like the sin of witchcraft. This man, who had as little title to the Crown as the least of you (for I hope you are all legitimate), being overtaken by justice, and by the goodness of his Prince brought to the scaffold, he has the confidence (good God, that men should be so impudent!) to say that God Almighty did know with what joyfulness he did die (a traitor!). Great God of heaven and earth! what reason have men to rebel? But, as I told you, rebellion is like the sin of witchcraft: *Fear God and honour the King* is rejected for no other reason, as I can find, but that it is written in St. Peter. Gentlemen, I must tell you, I am afraid that this city hath too many of these people in it, and it is your duty to find them out. Gentlemen, I shall not stand complimenting with you: I shall talk with some of you before you and I part, I tell you: I tell you I have brought a besom, and I will sweep every man's door, whether great or small. Certainly here are a great many of those men whom they call Trimmers: a Whig is but a mere fool to those; for a Whig is some sort of a subject in comparison of these; for a Trimmer is but a cowardly and base-spirited Whig; for the Whig is but the journeyman prentice that is hired and set over the rebellion, whilst the Trimmer is afraid to appear in the cause." He then opens his charge against the Aldermen for the sale of convicts, and thus continues, "Good God! where am I?—in Bristol? This city it seems claims the privilege of hanging and drawing among themselves. I find you have more need of a special commission once a month at least. The very magistrates, that should be the ministers of justice, fall [A. D. 1685. out with one another to that degree they will scarcely dine together: yet I find they can agree for their interest if there be but a *kid* in the case; for I hear the trade of *kidnapping* is much in request in this city. You can discharge a felon or a traitor, provided they will go to Mr. Alderman's plantation in the West Indies. Come, come, I find

you stink for want for rubbing. It seems the dissenters and fanatics fare well amongst you, by reason of the favour of the magistrates; for example, if a dissenter who is a notorious and obstinate offender comes before them, one alderman or another stands up and says, *He is a good man* (though three parts a rebel). Well then, for the sake of Mr. Alderman, he shall be fined but five shillings. Then comes another, and up stands another goodman Alderman, and says, *I know him to be an honest man* (though rather worse than the former). Well, for Mr. Alderman's sake, he shall be fined but half-a-crown; so *manus manum fricat;* you play the knave for me now, and I will play the knave for you by-and-by. I am ashamed of these things, but, by God's grace, I will mend them; for, as I have told you, I have brought a brush in my pocket, and I shall be sure to rub the dirt wherever it is, or on whomsoever it sticks." "Thereupon," says Roger North, "he turns to the Mayor, accoutred with his scarlet and furs, and gave him all the ill names that scolding eloquence could supply; and so, with rating and staring as his way was, never left till he made him quit the bench and go down to the criminal's post at the bar; and there he pleaded for himself as a common rogue or thief must have done; and when the Mayor hesitated a little, or slackened his pace, he bawled at him, and stamping, called for his guards, for he was still general by commission. Thus the citizens saw their scarlet chief magistrate at the bar, to their infinite terror and amazement."*

Only three were executed for treason at Bristol, but Jeffreys looking at the end of his campaign to the returns of the enemy *killed*, had the satisfaction to find that they amounted to 330,—besides 800 *prisoners* ordered to be transported.

He now hastened homewards to pounce upon the Great Seal. In [SEPT. 25, 1685.] his way through Somersetshire with a regiment of dragoons as his life-guards, the Major took the liberty to say that there were two *Spokes* who had been convicted, and that one of these left for execution was not the one intended to suffer, the other having contrived to make his escape, and that favour might perhaps still be shown to him whom it was intended to pardon. "No!" said the General-Judge; "his family owe a life, he shall die for his namesake!" To render such narratives credible, we must recollect that his mind was often greatly disturbed by fits of the stone, and still more by intemperance. Burnet, speaking of his behaviour at this time, says, "He was perpetually either drunk or in a rage, liker a fury than the zeal of a Judge."†

There is to be found only one defender of these atrocities. "I have indeed sometimes thought," says the author of A CAVEAT AGAINST THE WHIGS, "that in Jeffreys's western circuit justice went too far before mercy was remembered, though there was not above a fourth part executed of what were convicted. But when I consider in what manner several of those lives then spared were afterwards spent, I cannot but think a little more *hemp* might have been usefully employed upon that occasion."

* Life of Guilford, ii. 113. Wool. 225.

† Burnet, ii. 334.

But a great controversy has arisen, "who is chiefly to be blamed for them—Jeffreys or James?" Sheffield, Duke of Buckingham, declares that "the King never forgave the cruelty of the Judge in executing such multitudes in the west against his express orders." Père d'Orléans says, "Le Roi fut trop tard averti de ce désordre, mais on ne l'en eût pas plustôt informé qu'il en témoigna de l'indignation; et si des services importans, qu'il avoit reçu de ceux qui en étoient accusez, l'obligea de les épargner, il répara autant qu'il put leur injustice, par le pardon général qu'il accorda à ceux des révoltez qui étoient encore en état d'éprouver les effets de sa clémence." And reliance is placed by Hume,* on the assertion of Roger North, that his brother, the Lord Keeper, going to the King and moving him "to put a stop to the fury which was in no respect for his service, and would be counted a carnage, not law or justice,—orders went to mitigate the proceeding." [A. D. 1685.]

I have already demonstrated that this last assertion is a mere invention,† and though it is easy to fix deep guilt on the Judge, it is impossible to exculpate the monarch. Burnet says that James "had a particular account of his proceedings writ to him every day, and he took pleasure to relate them in the drawing-room to foreign ministers, and at his table, calling it *Jeffreys's campaign;* speaking of all he had done in a style that neither became the majesty nor the mercifulness of a great Prince." Jeffreys himself (certainly a very suspicious witness), when in the Tower, declared to Tutchin, that "his instructions were much more severe than the execution of them; and that at his return he was snubbed at Court for being too merciful." And to Dr. Scott, the divine who attended him on his death-bed, he said, "Whatever I did then I did by express orders; and I have this further to say for myself, that I was not half bloody enough for him who sent me thither." We certainly know from a letter written to him by the Earl of Sunderland at Dorchester, that "the King approved entirely of all his proceedings." And though we cannot believe that he stopped short of any severity which he thought would be of service to himself; there seems no reason to doubt (if that be any palliation), that throughout the whole of these proceedings his object was to please his master, whose disposition was now most vindictive, and who thought that, by such terrible examples, he should secure to himself a long and quiet reign.‡

The two were equally criminal, and both had their reward. But in the first instance, and till the consequences of such wickedness and folly began to appear, they met each other with mutual joy and congratulations. Jeffreys, returning from the [A. D. 1685.]

* Vol. viii. 236. † Ante, p. 380.

‡ One of the strongest testimonies against James is his own letter to the Prince of Orange, dated Sept. 24, 1685, in which, after giving him a long account of his fox-hunting, he says, "As for news, there is little stirring, but that Lord Chief Justice has almost done his campaign. He has already condemned several hundreds, some of which are already executed, some are to be, and the others sent to the plantations."—*Dalrymple's App.* part ii. 165.

west, by royal command stopped at Windsor Castle. He arrived there on the 28th of September; and after a most gracious reception, the Great Seal was immediately delivered to him, with the title of Lord Chancellor.

We learn from Evelyn that it had been three weeks in the King's personal custody. "About six o'clock came Sir Dudley North and his brother Roger North, and brought the Great Seal from my Lord Keeper, who died the day before. The King went immediately to Council; every body guessing who was most likely to succeed this great officer: most believed it would be no other than Lord Chief Justice Jeffreys, who had so rigorously prosecuted the late rebels, and was now gone the western circuit to punish the rest that were secured in the several counties, and was now near upon his return."*

The London Gazette of October 1, 1685, contains the following notice:

"Windsor, Sept. 28.

"His Majesty taking into his royal consideration the many eminent and faithful services which the Right Honourable George Lord Jeffreys, of Wem, Lord Chief Justice of England, has rendered the Crown, as well in the reign of the late King, of ever blessed memory, as since his Majesty's accession to the throne, was pleased this day to commit to him the custody of the Great Seal of England, with the title of Lord Chancellor."†

CHAPTER CI.

CONTINUATION OF THE LIFE OF LORD CHANCELLOR JEFFREYS TILL THE GREAT SEAL WAS TAKEN FROM HIM BY JAMES II. AND THROWN INTO THE RIVER THAMES.

[Sept. 29, 1685.] The new Lord Chancellor, having brought the Great Seal with him from Windsor to London, had near a month to prepare for the business of the term.

He took a large house in Duke Street, Westminster; and there fitted

* Mem. i. 569.

† The Crown Office Minute Book, not imitating the amusing circumstantiality of the old entries on the Close Roll, after stating the death of the late Lord Keeper on the 5th of September, the delivery of the Seal next day to the King, "who kept it in his own custody till the return of the Lord Jeffreys from the Western circuit,"—merely states, that, "on the 28th of the same September, his Majesty was pleased to deliver the Seal to him with the title of Lord Chancellor."—p. 121. Burnet relates, that as a farther reward he was created a Peer (ii. 335); and Hume and most subsequent historians repeat the statement, although it is quite certain that he had been created a Peer before the meeting of the parliament months before, and had taken an active part in the House of Lords before Monmouth's rebellion broke out. As such mistakes are little noticed, I am encouraged to hope that those I may fall into may be overlooked or forgiven.

up a Court, which was afterwards consecrated as a place of public worship, and is now called "Duke Street Chapel."*

He had had only a very slender acquaintance with Chancery proceedings, and he was by no means thoroughly grounded in common-law learning; but he now fell to the study of equity pleading and practice, and though exceedingly inferior to his two immediate predecessors in legal acquirements, his natural shrewdness was such, that, when entirely sober, he contrived to gloss over his ignorance of technicalities, and to arrive at a right decision. He was seldom led into temptation by the occurrence of cases in which the interests of political parties, or religious sects, were concerned; and, as an Equity Judge, the multitude rather regarded him with favour.

He took his place in the Court of Chancery on the 23d of October, the first day of Michaelmas term. I find no account of his procession from Duke Street to Westminster Hall; and I rather suspect that, on account of the offence he had given to so many persons by his brutal manners and his general unpopularity, it was not well attended. When he took the oaths in the Court of Chancery, there were present "the Earl of Rochester, Lord Treasurer, the Earl of Clarendon, Lord Privy Seal, the Duke of Beaufort, the Earl of Derby, the Earl of Sunderland, the Earl of Craven, the Earl of Burlington, Lord Fauconbridge, and several other persons of honour, who only stayed while he heard one motion, and then departed, leaving him sitting."† [A. D. 1685.]

The public and the profession were much shocked to see such a man at the head of the law; but as soon as he was installed in his office, there were plenty ready enough to gather round him, and, suppressing their real feelings, to load him with flattery and to solicit him for favours.

Evelyn, who upon his appointment as Chief Justice, describes him as "most ignorant, but most daring," now assiduously cultivated his notice; and, having succeeded in getting an invitation to dine with him, thus speaks of him:

"31st Oct. 1685.

"I dined at our great Lord Chancellor Jeffreys, who used me with much respect. This was the late Chief Justice, who had newly been the western circuit to try the Monmouth conspirators, and had formerly done such severe justice amongst the obnoxious in Westminster Hall, for which his Majesty dignified him by creating him first a Baron, and now Lord Chancellor; is of an assured and undaunted spirit, and has served the Court interest on all hardiest occasions; is of nature civil, and a slave of the Court."‡

* Pennant, in his "London," speaking of Jeffreys's house, says, "It is easily known by a large flight of stone steps, which his royal master permitted to be made into the park adjacent, for the accommodation of his Lordship. These steps terminate above in a small court, on three sides of which stands the house. The cause room was afterwards converted into a place of worship called Duke Street Chapel, and is on the left. When Jeffreys found it inconvenient to sit at Westminster or Lincoln's Inn, he made use of this court."

† Cr. Off. Min. B. fol. 122. ‡ Mem. i. 617.

A slave of the Court he still continued, till the wicked and insane measures which he unscrupulously supported proved the ruin of himself and his master. He who originated and commanded these incurred much less moral blame, as he was a sincere believer in the religion he wished to establish in the country; and it may be forgiven to a King to desire to extend his prerogative. Had he been resisted by a firm and virtuous minister, he might have continued to reign prosperously, and have transmitted his Crown to his posterity:—

> "How oft the sight of means to do ill deeds,
> Makes deeds ill done. Hadst not thou been by,
> A fellow by the hand of nature mark'd,
> Quoted, and sign'd to do a deed of shame,
> This murder had not came into my mind."

[Oct. 1685.] The very first measure which James proposed to his new Chancellor, literally, was the hanging of an alderman. He was still afraid of the mutinous spirit of the City, which, without some fresh terrors, might again break out, although the charters were destroyed; and no sufficient atonement had yet been made for the hostility constantly manifested by the metropolis to the policy of his family for half a century. His Majesty proposed that Alderman Clayton, a very troublesome agitator, should be selected as the victim. The Chancellor agreed that "it was very fit an example should be made, as his Majesty had graciously proposed; but if it were the same thing to his Majesty, he would venture to suggest a different choice. Alderman Clayton was a bad subject, but Alderman Cornish was still more troublesome, and more dangerous." The King readily acquiesced, and Alderman Cornish was immediately brought to trial before a packed jury, and executed on a gibbet erected in Cheapside, on pretence that some years before he had been concerned in the Ryehouse Plot.* The apologists of Jeffreys say (and as it is the only alleged instance of his gratitude I have met with, I have great pleasure in recording it) that he was induced to save Sir Robert Clayton from recollecting that this alderman had been his pot companion, and had greatly assisted him in obtaining the office of Common Serjeant.†

Monmouth's rebellion in England, and Argyle's in Scotland, being put down, and the City of London reduced to subjection, James expressed an opinion, in which the Chancellor concurred, that there was no longer any occasion to disguise the plan of governing by military force, and of violating at pleasure the solemn acts of the legislature. Parliament reassembled on the 9th of November, when Jeffreys took his seat on the Woolsack. The King alone (as had been concerted) addressed the two Houses, and plainly told them that he could rely upon

* 11 St. Tr. 381—465. This iniquitous attainder was reversed by act of parliament, 1 W. and M.

† Steward's Anecdotes, "Jeffries." However, the prosecution of Cornish excited such general horror, that even Sir John Trevor, the Master of the Rolls, vainly remonstrated against it, and told Jeffreys that if he pursued that unfortunate man to execution, it would be no better than murder."—Yorke's *Tribes of Wales*, 110.

"nothing but a good force of well-disciplined troops in constant pay," and that he was determined to employ "officers in the army, not qualified by the late tests, for their employments."*

When the King had withdrawn, Lord Halifax rose, and said, sarcastically, "They had now more reason than ever to give thanks to his Majesty, since he had dealt so plainly with them, and discovered what hé would be at."

This the Chancellor thought fit to take as a serious motion, and immediately put the question, as proposed by a noble Lord, "that an humble address be presented to his Majesty to thank him for his gracious speech from the throne." No one ventured to offer any remark, and it was immediately carried, *nemine dissentiente*. The King returned a grave answer to the address, "That he was much satisfied to find their Lordships were so well pleased with what he said, and that he would never offer any thing to their House that he should not be convinced was for the true interest of the kingdom."†

But the Lords very soon discovered the false position in which they had placed themselves, and the Bishops were particularly scandalized at the thought that they were supposed to have thanked the King for announcing a principle upon which Papists and Dissenters might be introduced into every civil office, and even into ecclesiastical benefices.

Accordingly, Compton, Bishop of London, moved "that a day might be appointed for taking his Majesty's speech into consideration," stating, "that he spoke the united sentiments of the Episcopal bench when he pronounced the test act the chief security of the established Church." This raised a very long and most animated debate, at which King James, to his great mortification, was present. Sunderland, and the popishly inclined ministers, objected to the regularity of the proceeding, urging that, having given thanks for the speech, they must be taken to have already considered it, and precluded themselves from finding fault with any part of it. The Lords Halifax, Nottingham, and Mordaunt, on the other side, treated with scorn the notion that the constitution was to be sacrificed to a point of form, and, entering into the merits of the question, showed that if the power which the Sovereign now, for the first time, had openly claimed were conceded to him, the rights, privileges, and property of the nation lay at his mercy.

At last the Lord Chancellor left the Woolsack, and not only bitterly attacked the regularity of the motion after an unanimous vote of thanks to the King for his speech, but gallantly insisted on the legality and expediency of the power of the Sovereign to dispense with laws for the safety and benefit of the state. No Lord Chancellor ever made such an unfortunate exhibition. He assumed the same arrogant and overbearing tone with which he had been accustomed from the bench to browbeat juries, counsel, witnesses, and prisoners, and he launched out into the most indecent personalities against his opponents. He was soon taught to know his place, and that frowns, noise, and menaces would not pass for

* 4 Parl. Hist. 1369. † Ibid. 1367.

arguments there. While he spoke he was heard with marked disgust by all parts of the House; when he sat down, being required to retract his words by those whom he had assailed, and finding all the sympathies of the House against him, he made to each of them an abject apology, "and he proved by his behaviour that insolence, when checked, naturally sinks into meanness and cowardice."*

The Ministerialists being afraid to divide the House,—Monday following, the 23d of November, was fixed for taking the King's speech into consideration.

But a similar disposition having been shown by the other House,—[Nov. 20, 1685.] before that day parliament was prorogued, and no other national council met till the Convention Parliament after the landing of King William.†

James, far from abandoning his plans, was more resolute to carry them into effect. The Earl of Rochester, his own brother-in-law, and others who had hitherto stood by him, having in vain remonstrated against his madness, resigned their offices; but Jeffreys still recklessly pushed him forward in his headlong career. In open violation of the Test Act, four Catholic Lords were introduced into the Cabinet, and one of them, Lord Bellasis, was placed at the head of the Treasury, in the room of the Protestant Earl of Rochester. Among such colleagues the Lord Chancellor was contented to sit in Council, and the wonder is, that he did not follow the example of Sunderland and other renegades who, at this time, to please the King, professed to change their religion, and were reconciled to the Church of Rome. Perhaps, with his peculiar sagacity, Jeffreys thought it would be a greater sacrifice in the King's eyes to appear to be daily wounding his conscience by submitting to measures which he must be supposed inwardly to condemn.

As a grand *coup d'état*, he undertook to obtain a solemn decision of the Judges in favour of the dispensing power, and for this purpose a fictitious action was brought against Sir Edward Hales, the Lieutenant of the Tower, an avowed Roman Catholic, in the name of his coachman, for holding an office in the army without having taken the oath of supremacy, or received the sacrament according to the rites of the Church of England, or signed the declaration against transubstantiation. Jeffreys had put the Great Seal to letters patent, authorizing him to hold the office without these tests, "*non obstante*" the act of parliament. This dispensation was pleaded in bar of the action, and upon a demurrer to the plea, after a sham argument by counsel, all the Judges except one (Baron Street) held the plea to be sufficient, and pronounced judgment for the defendant.‡ It was now proclaimed at Court that the law was not any longer an obstacle to any scheme that might be thought advisable.

The Earl of Castlemaine was sent to Rome, regularly commissioned as ambassador to his Holiness the Pope, a Papal nuncio being reciprocally received at St. James's. But however impolitic this step might

* Hume, viii. 241. † 4 Parl. Hist. 1367—1387. ‡ 11 St. Tr. 1165.

be, I do not think that the King and the Chancellor are liable to be blamed, as they have been, by recent historians for having in this instance violated acts of parliament. If all those are examined which had passed from the commencement of the Reformation down to the "Bill of Rights," it will probably be found that none of them can be applied to a diplomatic intercourse with the Pope.*

There can be no doubt of the illegality of the next measure of the King and the Chancellor. The Court of High Commission was revived with some slight modification, although it had been abolished in the reign of Charles I. by an act of parliament, which forbade the erection of any similar Court,—and Jeffreys, having deliberately put the Great Seal to the patent creating this new arbitrary tribunal,† undertook to preside in it. The Commissioners were vested with unlimited jurisdiction over the Church of England, and were empowered, even in cases of suspicion, to proceed inquisitorially like the abolished Court, "*notwithstanding any law or statute to the contrary.*" The object was to have all ecclesiastics under complete control, lest any of them should oppose the intended innovations in religion.‡

Jeffreys selected as his first victims, Sharp, Rector of St. Giles's, called "the railing parson," who had made himself very obnoxious to the government by inveighing against the errors of Popery, and Compton, Bishop of London, his diocesan, who had raised the storm against the dispensing power in the House of Lords. A mandate was issued to the Bishop to suspend the Rector, and this being declined on the ground that no man can be lawfully condemned till he has been heard in his defence, both were summoned before the High Commission.

The Bishop appearing, and being asked by the Chancellor why he had not obeyed the King's orders by suspending Dr. Sharp, prayed time to prepare his defence as his counsel [Aug. 4, 1686.] were on the circuit, and begged to have a copy of the commission. A week's time was given; but as to the commission, he was told "all the coffee-houses had it for a penny." On the eighth day the business was resumed; but the Bishop still said he was unprepared, having great difficulty to procure a copy of the commission;—when the Chancellor made him a bantering apology. "My Lord, in telling you our commission was to be seen in every coffee-house, I did not speak with any design to reflect on your Lordship, as if you were a haunter of coffee-houses. I abhor the thoughts of it!" A further indulgence of a fortnight was granted.

* Whether this is now forbidden depends upon the construction to be put on the words in the Bill of Rights, "shall hold *communion* with the See or Church of Rome." James's diplomatic intercourse with the Pope is not there alleged as one of his infractions, by which he had sought to subvert the religion and liberties of the kingdom.

† The erection of this Court is the third grievance enumerated by the Bill of Rights, 1 W. & M. sess. 2, c. 2.

‡ Burnet says that Jeffreys had been declining at Court, and that, jealous of the rising favour of Herbert, the Chief Justice, he, to please the King, suggested the bold measure of reviving the Court of High Commission.—ii. 370.

At the day appointed, the Bishop again appeared with four Doctors of the civil law,—who were so frightened, that they hardly dared to say a word for him; but he himself firmly, though mildly, argued, "that he had acted *jurisperitorum consilio*, and could not have had any bad motive; that he should not have been justified in obeying an illegal order; that he had privately recommended to Dr. Sharp not to preach; that this advice had been followed, so that the King's wish was complied with; and that if he had committed any fault, he ought to be tried for it before his Archbishop and brother Bishops."

Several of the Commissioners were inclined to let him off with an admonition; but Jeffreys obtained and pronounced sentence of *Suspension during the King's pleasure*, both on the Bishop and the Rector.*

There was another political trial where justice was done to the accused, although Jeffreys presided at it. [JAN. 1686.] A charge was brought against Lord Delamere, the head of an ancient family in Cheshire, that he had tried to excite an insurrection in that county in aid of Monmouth's rebellion. An indictment for high treason being found against him, he was brought to trial upon it, before Jeffreys as Lord High Steward and thirty Peers-triers. The king was present, and was very desirous of a conviction, as Lord Delamere, when a member of the House of Commons, had taken an active part in supporting the Exclusion Bill.

Jeffreys did his best to gratify this wish. According to the habit he had lately acquired in the west, he at first tried to induce the noble prisoner to confess,—in the hope of pardon "from the King's known clemency." "My Lord," said he, "if you are conscious to yourself that you are guilty of this heinous crime, give glory to God, make amends to his vicegerent the king, by a plain and full discovery of your guilt, and do not, by an obstinate persisting in the denial of it, provoke the just indignation of your Prince, who has made it appear to the world that his inclinations are rather to show mercy than inflict punishment."

Lord Delamere, to ease his mind from the anxiety to know whether the man who so spoke was to pronounce upon his guilt or innocence, said, "I beg your Grace would please to satisfy me whether your Grace be one of my judges in concurrence with the rest of the Lords?"—*L. H. Steward.* "No, my Lord, I am Judge of the Court, but I am none of your triers."†

A plea to the jurisdiction being put in, Lord Delamere requested his Grace to advise with the other Peers upon it, as it was a matter of privilege.—*L. H. Steward.* "Good my Lord, I hope you that are a prisoner at the bar are not to give me direction who I should advise with, or how I should demean myself here."

This plea was properly overruled, and *Not guilty* pleaded,—when

* 11 St. Tr. 1123—1166.

† When a Peer is tried in parliament before the House of Lords, the Lord High Steward votes like the rest of the Peers, who have all a right to be present; but if the trial be out of parliament, the Lord High Steward is only the Judge to give direction in point of law, and the verdict is by the Lords-triers specially summoned.

his Grace, to prejudice the Peers-triers against the noble prisoner as a notorious exclusionist, delivered an inflammatory address to them before any evidence was given,—thus beginning: "My Lords, I know you cannot but well remember what unjust and insolent attempts were made upon the rightful and unalterable succession to the imperial crown of these realms, under the pretence of that which has been so often found to be the occasion of rebellion, I mean the specious pretence of religion by the fierce, froward, and fanatical zeal of some members of the House of Commons in the last parliaments under the late King Charles II., of ever blessed memory; which by the wonderful providence of Almighty God not prevailing, the chief contrivers of that horrid villany consulted together how to gain that advantage upon the monarchy by open force which they could not obtain by a pretended course of law."

To create a farther prejudice, poor Lord Howard was called to repeat once more his oft-told tale of the Ryehouse Plot, with which it was not pretended that the prisoner had any connexion. The charge in the indictment was only supported by one witness, who himself had been in the rebellion, and who swore that Lord Delamere, at a time and place which he specified, had sent a message by him to Monmouth, asking a supply of money to maintain 10,000 men to be levied in Cheshire against King James. An *alibi* was clearly proved. Yet his Grace summed up for a conviction, and was at great pains, "for the sake of the numerous and great auditory, that a mistake in point of law might not go unrectified, which seemed to be urged with some earnestness by the noble Lord at the bar, *that there is a necessity there should be two positive witnesses to convict a man of treason.*"

To the honour of the peerage of England, there was an unanimous verdict of acquittal.* James himself even allowed this to be right, wreaking all his vengeance on the witness for not having given better evidence, and swearing that he would have him first convicted of perjury, and then hanged for treason. Jeffreys seems to have tried hard to behave with moderation on this trial; but his habitual arrogance from time to time broke out, and must have created a disgust among the Peers-triers very favourable to the prisoner. "My Lords," said he, "I would always be very tender of the privilege of the Peers; but truly I apprehend, according to the best of my understanding, that this Court is held before me: it is my warrant that convenes the prisoner to this bar: it is my summons that brings the Peers together to try him; and so I take myself to be the Judge of the Court."†

Jeffreys, still pretending to be a strong Protestant, eagerly assisted the King in his mad attempt to open the Church and the universities to the intrusion of the Catholics. The fellows of Magdalen College, Oxford, having disobeyed the royal mandate to elect, as head of their College, Anthony Farmer, who was not qualified by the statutes, and was a man of infamous character,—and having chosen the pious and learned Hough,—were summoned before the Court [Aug. 1686.]

* 11 St. Tr. 593.

† Ib. 592.

of Ecclesiastical Commission. Jeffreys observed that Dr. Fairfax, one of their number, had not signed the answer of the College to the charge of disregarding the King's recommendation. Fairfax asking leave to explain his reasons for declining to sign the answer, Jeffreys thought that he was willing to conform, and exclaimed, "Ay, this looks like a man of sense, and a good subject. Let's hear what he will say." *Fairfax.* "I don't object to the answer, because it is the vindication of my College: I go further; and as, according to the rules of the Ecclesiastical Courts, a libel is given to the party that he may know the grounds of his accusation, I demand that libel; for I do not know otherwise wherefore I am called here, and besides this affair should be discussed in Westminster Hall."—*Jeffreys.* "You are a Doctor of *Divinity*, not of *Law*."—*Fairfax.* "By what authority do you sit here?"—*Jeffreys.* "Pray, what commission have you to be so impudent in Court? This man ought to be kept in a dark room. Why do you suffer him without a guardian? Why did you not bring him to me? Pray let my officers seize him."*

Three members of the Ecclesiastical Commission were sent to Oxford [FEB. 1688.] to represent that formidable body, and they annulled the election of Hough, expelled the refractory Fellows, and made Magdalen College, for a time, a Popish establishment,—the Court in London, under the presidency of Jeffreys, confirming all their proceedings.

The Lord Chancellor next involved the King in the prosecution of the Seven Bishops, which, more than any other act of misrule during his reign, led to his downfall.† On the 25th of April, 1688, a new "Declaration of Indulgence" came out under the Great Seal; and, that it might be the more generally known and obeyed, an order was sent from the Council to all Bishops in England, enjoining that it should be read by the clergy in all churches and chapels within their dioceses during divine service. A petition, signed by Sancroft, the Archbishop, and six other Prelates, was laid before the King, praying in respectful language that the clergy might be excused from reading the Declaration; not because they were wanting in duty to the Sovereign, or in tenderness to the dissenters, but because it was founded upon the dispensing power, which had often been declared illegal in Parliament, and on that account they could not, in prudence, honour, or conscience, be such parties to it as the reading of it in the church would imply.

Even the Earl of Sunderland and Father Peter represented to the [JUNE, 1688.] King the danger of arraying the whole Church of England against the authority of the Crown, and advised him that the Bishops should merely be admonished to be more compliant. But with the concurrence of Jeffreys he resolved to visit them with condign punishment, and they were ordered to appear before the Council, with a view to obtain evidence against them, as the Petition had been

* 11 St. Tr. 1143—1148. 12 St. Tr. 1. 26, n.

† In James's Memoirs, all the blame of this prosecution is thrown upon Jeffreys; but, it is more probable, that he only recklessly supported his master.

privately presented to the King. When they entered the Council chamber, Jeffreys said to them, "Do you own the Petition?" After some hesitation, the Archbishop confessed that he wrote it, and the Bishops, that they signed it.—*Jeffreys.* "Did you publish it?" They, thinking he referred to the *printing* of it, of which the King had loudly complained, denied this very resolutely,—but they admitted that they had delivered it to the King at Whitehall palace, in the county of Middlesex.* This was considered enough to fix them with a publication, in point of law, of the supposed libel; and Jeffreys, after lecturing them on their disloyalty, required them to enter into a recognisance to appear before the Court of King's Bench, and answer the high misdemeanour of which they were guilty. They insisted, that, according to the privileges of the House of Peers, of which they were members, they could not lawfully be committed, and were not bound [A. D. 1688.] to enter into the required recognisance. Jeffreys threatened to commit them to the Tower as public delinquents. *Archbishop.* "We are ready to go whithersoever his Majesty may be pleased to send us. We hope the King of kings will be our protector and our judge. We fear nought from man; and having acted according to law and our consciences, no punishments shall ever be able to shake our resolutions."

If this struggle could have been foreseen, even Jeffreys would have shrunk from the monstrous impolicy of sending these holy men to jail, on what would be considered the charge of temperately exercising a constitutional right in defence of the Protestant faith, so dear to the great bulk of the nation;—but he thought it was too late to resile. He, therefore, with his own hand, drew a warrant for their commitment, which he signed, and handed round the Board. It was signed by all the Councillors present, except Father Peter, whose signature the King excused—to avoid the awkward appearance of Protestant Bishops being sent to jail by a Jesuit.

It is not for me to relate the progress of these pious confessors to the Tower of London, or the interesting vicissitudes of their trial;† but there are some circumstances connected with their acquittal in which Jeffreys personally appears.

Seeing how he had acquired such immense favour, there were other lawyers who tried to undermine him by his own arts. One of the most formidable of these was Sir John Trevor, Master of the Rolls, who, some authors say, certainly would have got the [JUNE 29.] Great Seal had James remained longer on the throne, but whom Jeffreys had hitherto kept down by reversing his decrees. The Chancellor's alarm was now excited by a report that Sir William Williams, (who, from being Speaker of the last Westminster parliament, and fined 10,000*l.* on the prosecution of the Duke of York, was become the caressed Solicitor-General to James II.,) had a positive promise of the Great Seal if he could obtain a convic- [JUNE 29, 1688.]

* On their trial, they were, after all, about to be acquitted for want of evidence, when Lord Sunderland was sent for, and proved a statement which they had made to him that they were going into the King's closet to present the Petition.

† 12 St. Tr. 183—433.

tion of the Seven Bishops.* His brutal conduct to them during the whole trial, which was no doubt reported to Jeffreys, would confirm the rumour and increase his apprehensions. The jury having set up all night without food, fire, or candle, to consider of their verdict, the Lord Chancellor had, while they were still enclosed, come down to Westminster Hall next morning, and taken his seat in Court. When he heard the immense shout arise which soon made the King tremble on Hounslow Heath, he smiled and hid his face in his nosegay—"as much," observes the relater of the anecdote, "as to say, *Mr. Solicitor, I keep my seal.*"†

However, the part he had taken in sending the Bishops to the Tower had caused such scandal, that the University of Oxford would not have him for their Chancellor, although in the prospect of a vacancy he had received many promises of support. The moment the news arrived of the death of the old Duke of Ormond, his grandson was elected to succeed him; and next day a mandate coming from Court to elect Lord Jeffreys, an answer was returned, that an election had already taken place, which could not be revoked.

Suspecting that things were now taking an unfavourable turn, he began privately to censure the measures of the Court, and to insinuate that the King had acted against his advice, saying, "It will be found that I have done the part of an honest man; but as for the Judges, they are most of them rogues."

About this time he was present at an event which was considered [June 10.] more than a counterpoise to recent discomfitures, but which greatly precipitated the crisis by taking away the hope of relief by the rightful succession of a Protestant heir.—Being suddenly summoned to Whitehall, he immediately repaired thither, and found that the Queen had been taken in labour. Other Councillors and many ladies of quality soon arrived, and they were all admitted into her bedchamber. [A.D. 1688.] Her Majesty seems to have been much annoyed by the presence of the Lord Chancellor. The King calling for him, he came forward, and stood on the step of the bed to show that he was there. She then begged her consort to cover her face with his head and periwig; for she declared "she could not be brought to bed, and have so many men look on her." However, the fright may have shortened her sufferings; for James III., or "the Old Pretender," very speedily made his appearance, and the midwife having made the concerted signal that the child was of the wished-for sex, the company retreated.‡

* The arrangement of counsel in this celebrated case was very whimsical. The Bishops were defended by Pemberton, the Ex-chief Justice, who had presided at several of the late state trials, by Levinz, Sawyer, and Finch, who had conducted them very oppressively for the Crown, and by Polexfen, Treby, and Somers, considered steady Whigs.

† On the authority of Lord Hardwicke. See Yorke's *Tribes of Wales*, 110, n. 12 St. Tr. 183.

‡ The attendance of Jeffreys at Whitehall on this occasion was celebrated in doggerel verse:—

"Then comes great George of England, Chancellour,
Who was with expedition call'd to th' labour."

Considering the surmises which had been propagated ever since the Queen's pregnancy was announced, that it was feigned, and that a supposititious child was to be palmed upon the world, Jeffreys was greatly deficient in duty to the King in not having recommended steps to convince the public from the beginning, [Oct. 22.] beyond all possibility of controversy, of the genuineness of the birth. When the story of the "warming-pan" had taken hold of the public mind, many witnesses were examined before the Privy Council to disprove it;* but it continued an article of faith with thorough Anti-Jacobites during the two succeeding reigns.

The birth of a son, which the King had so ardently longed for, led to his speedy overthrow. Instead of the intrigues between the discontented at home and the Prince and Princess of Orange, hitherto regarded as his successors, being put an end to, they immediately assumed a far more formidable aspect. William, who had hoped in the course of a few years to wield the energies of Britain against the dangerous ambition of Louis XIV., saw that if he remained quiet he should with difficulty even retain the circumscribed power of Stadtholder of the United Provinces. He therefore gladly listened to the representations of those who had fled to Holland to escape from the tyranny exercised in their native country, or who sent secret emissaries to implore his aid; and he boldly resolved to come to Eng- [A. D. 1688.] land—not as a military conqueror, but, for their deliverance, and to obtain the Crown with the assent of the nation. That he and his adherents might be protected against any sudden effort to crush them, a formidable fleet was equipped in the Dutch ports, and a considerable army, which had been assembled professedly for a different purpose, was ready on a short notice to be embarked in it.

James, who had been amusing himself by making the Pope godfather to his son, and had listened with absolute incredulity to the rumours of the coming invasion, suddenly became sensible of his danger, and, to avert it, was willing to make any sacrifice to please his people. The slender merit of the tardy, forced, and ineffectual concessions which were offered is claimed respectively by the apologists of the King, of Jeffreys, and of the Earl of Sunderland, but seems due to the last of the three. James's infatuation was so transcendent,—he was so struck with judicial blindness,—being doomed to destruction, he was so demented, that, if let alone, he probably would have trusted with confidence to his divine right and the protection of the Virgin, even when William had landed at Torbay. As far as I can discover,—from the time when Jeffreys received the Great Seal, he never originated any measures wise or wicked, and, without remonstrance, he heartily cooperated in all those suggested by the King, however illegal or mischievous they might be. I do not find the slightest foundation for the assertion that, with all his faults, he had a regard for the Protestant religion, which made him stand up in its defence. The "Declaration of Indulgence," to which he put the Great Seal, might be imputed to a

* 12 St. Tr. 123.

love of toleration (to which he was a stranger), but what can be said of the active part he took in the High Commission Court, and in introducing Roman Catholics into the Universities and into the Church. The Earl of Sunderland, though highly unprincipled, was a man of great discernment and courage; he could speak boldly to the King; and he had joined in objecting to the precipitate measures for giving ascendency to his new religion, which had produced this crisis. His seemingly forced removal from office he himself probably suggested, along with the other steps now taken to appease the people.

Whoever might first propose the altered policy, Jeffreys was the instrument for carrying it into effect, and thereby it lost all its grace and virtue. [OCT. 27, 1688.] He took off the suspension of the Bishop of London, and, by a *supersedeas* under the Great Seal, abolished the High Commission Court. He annulled all the proceedings respecting Magdalen College, and issued the necessary process for reinstating Dr. Hough and the Protestant Fellows. He put the Great Seal to a general pardon.

But the reaction was hoped for, above all, from the restoration of the City charters.* On the 2d of October he sent a flattering message to the Mayor and Aldermen to come to Whitehall in the evening, that they might be presented at Court by "their old Recorder." Here the King told them that he was mightily concerned for the welfare of their body, and that at a time when invasion threatened the kingdom, he was determined to show them his confidence in their loyalty, by restoring the rights of the city to the state in which they were before the unfortunate *quo warranto* proceedings had been instituted, in the late reign. Accordingly, on the following day, a meeting of the Common Council was called at Guildhall, and the Lord Chancellor proceeded thither in his state carriage, attended by his purse-bearer, mace-bearer, and other officers, and, after a florid speech, delivered them letters patent under the Great Seal, which waived all forfeitures, revived all charters, and confirmed all liberties the city had ever enjoyed under the King or any of his ancestors. Great joy was manifested; but the citizens could not refrain from showing their abhorrence of the man who brought these glad tidings, and on his return they hissed him, and hooted him, and gave him a foretaste of the violence he was soon to experience from an English mob.

It is said that, upon a rumour that the Prince of Orange had suffered some disaster, the King repented of these concessions, and ordered them to be recalled; but, in truth, the assent of the Crown [A.D. 1688.] was expressed by the Chancellor to the restoration of Treby to the office of Recorder, and to the election of Sir John Shorter, a churchman, as Mayor, in the room of Eyles, an anabaptist, who had been appointed by the Crown, that he might be succeeded by a Roman Catholic. The forfeited and surrendered charters were likewise restored to the other corporations in England. These popular acts, however, were generally ascribed to fear, and the coalition of all parties

* See Diary of second Lord Clarendon, 3d Oct. 1688.

including the preachers of passive obedience,—to obtain a permanent redress of grievances by force,—continued resolute and unshaken.

When William landed, the frightful severities of Jeffreys in the west had the effect of preventing the populace from flocking to his standard, but he met with no opposition, [Nov. 5, 1688.] and soon persons of great consideration and influence sent in their adhesion to him.

When we read in history of civil commotions and foreign invasions, we are apt to suppose that all the ordinary business of life was suspended. But on inquiry, we find that it went on pretty much as usual, unless where interrupted by actual violence. While the Prince of Orange was advancing to the capital, and James was marching out to give him battle, if his army would have stood true,—the Court of Chancery sat regularly to hear "exceptions" and "motions for time to plead;" and on the very day on which the Princess Anne fled to Nottingham, and her unhappy father exclaimed, in the extremity of his agony, "God help me! my own children have forsaken me," the Lord Chancellor decided, that, "if an administrator pays a debt due by bond before a debt due by a decree in Equity, he is still liable to pay the debt due by the decree."*

Change of dynasty was not yet talked of, and the cry was for "a free parliament." To meet this, the King resolved to call one in his own name; and the last use which Jeffreys made of the Great Seal was by sealing writs for the election of members of the House of Commons, who were ordered to meet on the 15th of January following.† [A.D. 1688.]

This movement only infused fresh vigour into the Prince of Orange, who now resolved to bring matters to a crisis; and James finding himself almost universally deserted,—as the most effectual way, in his judgment, of annoying his enemies,—very conveniently for them, determined to leave the kingdom. Preparatory to this he had a parting interview with Jeffreys, to whom he did not confide his secret, but he obtained from him all the parliamentary writs which had not been issued to the sheriffs, amounting to a considerable number, and these, with his own hand, he threw into the fire,—so that a lawful parliament might not be assembled when he was gone. To increase the confusion, he required Jeffreys to surrender the Great Seal to him,—having laid the plan of destroying it,—in the belief that without it the government could not be conducted.

All things being prepared, and Father Peter and the Earl of Melfort having been informed of his intentions, which he still concealed from

* 24th Nov. 1688. 2 Vernon, 88, Searle *v.* Lane. By a reference to the minute books in the Registrar's Office, it appears that Jeffreys sat again on Monday Nov. 26th, when he decided Duval *v.* Edwards, a case on exceptions, nine in number, giving a separate judgment on each. He did not sit on the 27th, but he did on the 28th, which was the last day of Term. So late as the 8th of December he sat and heard several petitions. In the evening of this day the Great Seal was taken from him. The Court of Chancery was held by the Master of the Rolls and certain Masters up to Christmas.

† See Diary of second Earl of Clarendon, Nov. 28, 29, 1688.

[A. D. 1688.] Jeffreys,—on the night of the 10th of December, James, disguised, left Whitehall accompanied by Sir Edward Hales, whom he afterwards created Earl of Tenterden. London Bridge (which they durst not cross) being the only one then over the Thames, they drove in a hackney-coach to the Horse Ferry, Westminster, and as they crossed the river with a pair of oars, the King threw the Great Seal into the water, and thought he had sunk with it for ever the fortunes of the Prince of Orange. At Vauxhall they found horses in readiness for them, and they rode swiftly to Feversham, where they embarked for France.

CHAPTER CII.

CONCLUSION OF THE LIFE OF LORD CHANCELLOR JEFFREYS.

Instead of narrating the adventures of the monarch, when he was intercepted at Feversham, we must confine ourselves to what befell the unhappy Ex-chancellor. He heard early next morning of the royal flight, and was thrown into a state of the greatest consternation. [Dec. 11, 1688.] He was afraid of punishment from the new government which was now to be established, and being asked by a courtier if he had heard "what the *heads* of the Prince's declaration were?" he answered, "I am sure that my *head* is one, whatever the rest may be." He dreaded still more the fury of the mob, of which the most alarming accounts were soon brought him. In the existing state of anarchy, almost the whole population of the metropolis crowded into the streets in quest of intelligence;* the excitement was unexampled; there was an eager desire to prevent the King's evil Councillors from escaping along with him; and many bad characters, under pretence of a regard for the Protestant religion, took the opportunity to gratify their love of violence and plunder.

The first object of vengeance was Father Peter; but it was found that in consequence of the information of the King's intentions conveyed to him and the Earl of Melfort, they had secretly withdrawn the day before, and were now in safety. The Pope's Nuncio was rescued from great peril by the interposition of the Lords of the Council, who had met, and, exercising temporarily the powers of government, were striving to preserve the public tranquillity.

The next victim demanded was Jeffreys, who (no one knowing that the Great Seal had been taken from him) still went by the name of "the Chancellor," and who of all professing Protestants [A. D. 1688.] was the most obnoxious to the multitude. He retired

* See Hubert's description to King John of the smith's swallowing the tailor's news,—

"With his shears and measure in his hand,
Standing on slippers, which his nimble haste
Had falsely thrust upon contrary feet."

early in the day from his house in Duke Street to the obscure dwelling of a dependant in Westminster, near the river side,—and here, lying concealed, he caused preparations to be made for his escape from the kingdom. It was arranged that a coal-ship which had delivered her cargo should clear out at the Custom House as for her return to Newcastle, and should land him at Hamburgh.

To avoid, as he thought, all chance of being recognised by those who had seen him in ermine or gold-embroidered robes, with a long white band under the chin, his collar of S. S. round his neck, and on his head a full-bottom wig, which had recently become the attribute of judicial dignity, instead of the old-fashioned coif or black-velvet cap,—he cut off his bushy eyebrows, which used to inspire such terror, he put on the worn-out dress of a common sailor, and he covered his head with an old tarred hat that seemed to have weathered many a blast.*

Thus disguised, as soon as it was dusk he got into a boat; and the state of the tide enabling him to shoot London Bridge without danger, he safely reached the coal-ship lying off Wapping. Here he was introduced to the captain and the mate, on whose secrecy he was told he might rely, but, as they could not sail till next day,—when he had examined his berth, he went on board another vessel that lay at a little distance, there to pass the night. If he had not taken this precaution, he would have been almost immediately in the power of his enemies. The mate, without waiting to see what became of him, hurried on shore, and treacherously gave information to some persons who had been in pursuit of him, that he was concealed in the Newcastle collier. They applied to Justices of the peace in the neighbourhood for a warrant to arrest him,—which was refused, on the ground that no specific charge was sworn against him. They then went to the Lords of the Council, whom they found sitting, and who actually gave them a warrant to apprehend him for high treason, —under the belief that the safety of the state required his detention. Armed with this, they returned to the coal-ship in which he had taken his passage, but he was not there, and the captain, a man of honour, baffled all their inquiries. [A.D. 1688.]

He slept securely in the vessel in which he had sought refuge; and had it not been for the most extraordinary imprudence, leading to the belief that he was fated speedily to expiate his crimes, he might have effected his escape. Probably, with a view of indulging more freely his habit of intemperance, he next morning came ashore, and made his appearance at a little ale-house bearing the sign [DEC. 13.]

* Other accounts, varying a little from this, were given of his disguise, as we learn from contemporary ballads:—

> "He took a *collier's* coat to sea to go—
> Was ever Chancellour arrayed so?"

> "Jeffreys was prepared for sailing
> In his *long tarpaulin gown*:
> Where is now his furious railing,
> And his blood-congealing frown?"

of "The Red Cow," in *Anchor and Hope Alley, near King Edward's Stairs, Wapping*, and called for a pot of ale. When he had nearly finished it,—still wearing his sailor's attire, with his hat on his head, he was so rashly confident as to put his head out from an open window to look at the passengers in the street.*

I must prepare my readers for the scene which followed, by relating, in the words of Roger North, an anecdote of the behaviour of Jeffreys to a suitor in the heyday of his power and arrogance. "There was a scrivener of Wapping brought to hearing for relief against a *bummery bond*.† The contingency of losing all being showed, the bill was going to be dismissed;‡ but one of the plaintiff's council said that the scrivener was a strange fellow, and sometimes went to church, sometimes to conventicles, and none could tell what to make of him; and *it was thought he was a trimmer*. At that the Chancellor fired; and '*A trimmer!*' said he; '*I have heard much of that monster, but never saw one. Come forth, Mr. Trimmer—turn you round, and let us see your shape*,' and at that rate talked so long that the poor fellow [A.D. 1688.] was ready to drop under him; but at last the bill was dismissed with costs, and he went his way. In the hall one of his friends asked him how he came off? '*Came off*,' said he: 'I am escaped from the terrors of that man's face, which I would scarce undergo again to save my life, and I shall certainly have the frightful impression of it as long as I live.' "§

It happened, by a most extraordinary coincidence, that this very scrivener was then walking through *Anchor and Hope Alley* on the opposite side of the way, and immediately looking towards "The Red Cow," thought he recollected the features of the sailor who was gazing across towards him. The conviction then flashed upon his mind that this could be no other than the Lord Chancellor who had so frightened him out of his wits before pronouncing a decree in his favour about the "*bummery bond*." But hardly believing his own senses, he entered the tap-room of the ale-house to examine the countenance more deliberately. Upon his entrance, Jeffreys must have recognised "the Trimmer;" for he coughed, turned to the wall, and put the quart-pot before his face. An immense multitude of persons were, in a few minutes, collected round the door by the proclamation of the scrivener, that the pretended sailor was indeed the wicked Lord Chancellor Jeffreys. He was now in the greatest jeopardy, for unlike the usual character of the English mob, who are by no means given to cruelty, the persons here assembled were disposed at first to tear him limb from limb, and he was only saved by the interposition of some of the more

* To heighten the effect, some relate that the captain of the collier was in the mean time waiting for him, and that he lost the tide and his life by his love of drinking.

† "Bottomry bond." This contraction shows the etymology of an elegant English word from "bottom," which Dr. Johnson chooses to derive from the Dutch word "bomme."

‡ *i. e.* The principal being put in hazard, the interest was not usurious.

§ Life of Guilford, ii. 118.

considerate, who suggested that the proper course would be to take him before the Lord Mayor.

The cry was raised, "To the Lord Mayor's!" but before he could be secured in a carriage to be conveyed thither, they assaulted and pelted him;* and might have proceeded to greater extremities, if a party of the train-bands had not rescued him from their fury. They still pursued him all the way with whips, and halters, and cries of "Vengeance! Justice! Justice!"† Although he lay back in the coach, he could still be discovered in his blue jacket, [A.D. 1688.] and with his sailor's hat flapped down upon his face.‡ The Lord Mayor, Sir John Chapman, a nervous, timid man, who had stood in tremendous awe of the Lord Chancellor, could not now see him, disguised as a sailor, without trepidation,—and instead of ordering him to stand at the bar of his justice-room,—with much bowing and scraping, and many apologies for the liberty he was using, requested that his Lordship would do him the honour to dine with him, as, it being now past twelve o'clock, he and the Lady Mayoress were about to sit down to dinner. Jeffreys, though probably with little appetite, was going to accept the invitation,—when a gentleman in the room exclaimed, "The Lord Chancellor is the Lord Mayor's prisoner, not his guest; and now to harbour him is treason, for which any one, however high, may have to answer with his own blood." The Lord Mayor swooned away, and died (it is said of apoplexy) soon after.

The numbers and violence of the mob had greatly increased from

* Some accounts say that he died of the wounds he now received, but I do not think that any serious injury was inflicted upon him.

† The feelings of the mob are thus described in some doggrel verses, which I copy for the epigrammatic point at the end:

"Limb him they would, as boys at Shrovetide do:
Some cried I am for a wing, an arm; for what are you?
I am for his head, says one; for his brains, says t'other;
And I am for his nose; his ears, another.
Oh, cries a third, I am for his buttocks brave;
Nine pounds of steaks from them I mean to have.
I know the rogue is fleshy, says a fourth,
His heart to me will be of greatest worth.
Yes, quoth another, but not good to eat,—
A heart of steel will ne'er prove tender meat."

A better specimen of the street ballads on this occasion contains the following lines:—

"Now you may hear the people as they scoure
Along, not fear to damn the Chancelloure.
Then women, too, and all the tender crew
That used to pity, all now laugh at you."

‡ Burnet says, "*After many hours tossing him about*, he was carried to the Lord Mayor." But this seems to be a great exaggeration, for they must have arrived at the Lord Mayor's about mid-day; and, considering the season of the year, the discovery at Wapping could not have been much before nine in the morning.—*O. T.* ii. 542.

the delay in examining the culprit, and they loudly threatened to take the law into their own hand.* Some were for examining him before an Alderman, and leading him out by a back way for that purpose; [A.D. 1688.] but he himself showed most prudence by advising that, without any previous examination, he should be committed to the Tower for safe custody, and that two other regiments of the train-bands should be ordered up to conduct him thither. In the confusion, he offered to draw the warrant for his own commitment. This course was followed, but was by no means free from danger, the mob defying the matchlocks and pikes of the soldiers, and pressing round the coach in which the noble prisoner was carried, still flourishing the whips and halters, and expressing their determined resolution to execute summary justice upon him for the many murders he had committed. Seeing the imminent danger to which he was exposed, and possibly conscience-struck when he thought he was so near his end, he lost all sense of dignity, and all presence of mind. He held up his imploring hands, sometimes on one side of the coach, and sometimes on the other, exclaiming, "For the Lord's sake, keep them off! For the Lord's sake, keep them off!" Oldmixon, who was an eyewitness of this procession, and makes great professions of compassion for malefactors, declares that he saw these agonizing alarms without pity.†

The difficulty was greatest in passing the open space on Tower Hill. But at length the carriage passed the drawbridge, and the portcullis descended. Within all was still. Jeffreys was courteously received by Lord Lucas, recently appointed Lieutenant,—and in a gloomy apartment, which he never more left, he reflected in solitude on the procession which had just terminated,—so different from those to which he had been accustomed for some years on the first day of each returning [A.D. 1688.] Term, when attended by the Judges and all the grandees of the law, he had moved in state to Westminster Hall, the envy and admiration of all beholders.

A regular warrant for his commitment was the same night made out by the Lords of the Council,‡ and the next day a deputation from their body, consisting of Lords North, Grey, Chandos, and Ossulston, attended to examine him at the Tower. Four questions were asked him. 1. "What he had done with the Great Seal of England?" He answered, "that he had delivered it to the King on the Saturday before at

* "At fessi tandem cives, infanda furentem
Armati circumsistunt ipsumque domumque,
Atque ad supplicium præsenti morte reposcunt."

† "I saw him, and heard him, and, I truly say, without pity; though I never saw any malefactor in his distress without compassion or concern."—i. 762.

"So dreadfully did his own insolence and barbarity recoil upon his own head; and so much was he to suffer as a criminal, who, as a Judge, had brought such sufferings on others. Every face that he saw was the face of a jury; every grasp that he felt he had reason to think was that of the demon that waited for him; every voice that he could distinguish in so wild an uproar overwhelmed him with reproaches; and his conscience echoed within him that he deserved them all."—*Ralph*, i. 1063.

‡ This recited that he had been removed to the Tower at his own desire, to secure him from the violence of the people.

Mr. Cheffnel's, no person being present, and that he had not seen it since." He was next asked, 2. "Whether he had sealed all the writs for the parliament, and what he had done with them?" "To the best of his remembrance," he said, "the writs were all sealed and delivered to the King" (suppressing that he had seen the King throw a great many of them in the fire.) 3. "Had he sealed the several patents for the then ensuing year?" He declared "that he had sealed several patents for the new Sheriffs, but that he could not charge his memory with the particulars." Lastly, he was asked "whether he had a license to go out of the kingdom?" And to this he replied, "that he had several licenses to go beyond sea, which were all delivered to Sir John Friend." He subscribed these answers with an affirmation, that "they were true upon his honour,"—and the Lords withdrew.

But no sympathy did he meet with from any quarter, and he was now reproachfully spoken of even by the King, to please whom, he had "his eternal jewel given to the common enemy of man."* The news of the outbreak against him coming speedily to Feversham, the fugitive monarch, meditating an attempt to remount his throne, thought that his Chancellor might possibly be accepted by the nation as a scape-goat, and laid upon him the great errors of his reign. It happened, strangely enough, that the Inn to which James had been carried when captured off Sheerness, was kept by a man on whom [A. D. 1688.] Jeffreys, for some supposed contempt of Court, had imposed a very heavy fine, which had not yet been levied. Complaining of this arbitrary act to his royal guest,—who had admitted him to his presence, and had asked him, in royal fashion,—"his name, his age, and his history,"—James desired him to draw a discharge as ample as he chose,—and, establishing a precedent, which has been often followed since, for writing in a seemingly private and confidential document what is intended afterwards to be communicated to the public, he subjoined to his signature these remarkable words, which were immediately proclaimed in Feversham and transmitted to London, "I am sensible that my Lord Chancellor hath been a very ill man, and hath done very ill things."

Jeffreys was assailed by the press in a manner which showed how his cruelties had brutalised the public mind. A poetical letter, addressed to him, advising him to cut his own throat, thus concluded:—"I am your Lordship's OBEDIENT SERVANT in any thing of this nature. From the little house over against Tyburn, where the people are almost dead with expectation of you."

This was followed by "A Letter from Hell from Lord Ch——r Jeffreys to L—— C—— B—— W——d." His "Confession," hawked about the streets, contained an exaggerated statement of all the bad measures of the latter part of the preceding and of the present reign. Then came his "Last Will and Testament," commencing, "In the

* What visions he had in the Tower we are not exactly told; but his career does strongly remind us of the stories of men selling themselves to the Devil for a term of prosperous fortune, and then being claimed according to the bond they had signed.

name of AMBITION, the only god of our setting and worshipping, together with CRUELTY, PERJURY, PRIDE, INSOLENCE, &c., I, George Jeffreys, being in sound and perfect memory, of high commissions, *quo warrantos*, dispensations, pillorizations, floggations, gibitations, barbarity, butchery, &c., do make my last will," &c. Here is the concluding legacy:—"Item, I order an ell and a half of fine cambric to be cut into handkerchiefs for drying up all the wet eyes at my funeral; together with half a pint of burnt claret for all the mourners in the kingdom."

When he had been some weeks in confinement he received a small [A. D. 1688.] barrel, marked "Colchester Oysters," of which, ever since his arrival in London when a boy, he had been particularly fond. Seeing it he exclaimed, "Well, I have some friends left still;" but on opening it, the gift was—a halter!

An actual serious petition was received by the Lords of the Council of England from "the widows and fatherless children in the West," beginning, "We, to the number of a thousand and more widows and fatherless children of the counties of Dorset, Somerset, and Devon; our dear husbands and tender fathers having been so tyrannously butchered and some transported; our estates sold from us, and our inheritance cut off, by the severe and brutish sentence of George Lord Jeffreys, now we understand in the Tower of London a prisoner," &c. After enumerating some of his atrocities, and particularly dwelling upon his indecent speech (which I may not copy) to a young lady who asked the life of her lover convicted before him, the petitioners thus concluded:—"These with many hundred more tyrannical acts, are ready to be made appear in the said counties by honest and credible persons, and therefore your petitioners desire that the said George Jeffreys, late Lord Chancellor, the vilest of men, may be brought down to the counties aforesaid, where we the good women of the West shall be glad to see him, and give him another manner of welcome than he had there three years since."

Meanwhile, the Great Seal, the *Clavis Regni*, the emblem of sovereign sway, which had been thrown into the Thames that it might never reach the Prince of Orange, was found in the net of a fisherman near Lambeth, and was delivered by him to the Lords of the Council, who were resolved to place it in the hands of the founder of the new dynasty;*

* This fishing up of the Great Seal calls forth from Sir John Dalrymple the observation, "that Heaven seemed by this accident to declare that the laws, the constitution, and the sovereignty of Great Britain were not to depend on the frailty of man.

"Dum domus Æneæ Capitoli immobile saxum
Accolet, imperiumque pater Romanus habebit."

Bishop Burnet represents that the Great Seal was not fished up till the following summer, his narrative displaying his usual inaccuracy and credulity. "A fisherman, between Lambeth and Vauxhall, was drawing a net pretty close to the channel; *and a great weight, not without some difficulty, drawn to the shore*, which, when taken up, was found to be the Great Seal of England." One would suppose from this that "the Seal" was as large and heavy as a millstone, or at least as the fish whose name it bears,—whereas the fisherman could have experienced no diffi-

and James, after revisiting the capital and enjoying a fleeting moment of popularity, had finally bid adieu to England and was enjoying the munificent hospitality of Louis at St. Germaine's.

The provisional government, in deference to the public voice, issued an order for the more rigorous confinement of the Ex-Chancellor in the Tower, and intimated a resolution that he should speedily be brought to trial for his misdeeds; but, amidst the stirring events which rapidly followed, he was allowed quietly to languish out the remainder of his miserable existence. While the elections were proceeding for the Convention Parliament—while the two Houses were struggling respecting the "abdication" or "desertion" of the throne—while men were occupied with discussing the "Declaration of Rights"—while preparations were making for the coronation of the new Sovereigns—while curiosity was keenly alive in watching their demeanour—and while alarms were spread by the adherence of Ireland to the exiled King—the national indignation, which at first burst forth so violently against the crimes of Jeffreys, almost entirely subsided, and little desire was evinced to see him punished as he deserved.

However, considerable sensation was excited by the news that he was no more. He breathed his last in the Tower of London, on the 19th of April, 1689, at thirty-five minutes past four in the morning. Those who take a vague impression of events, without attention to dates, may suppose, from the crowded vicissitudes of his career, that he must have passed his grand climacteric, but he was still only in the forty-first year of his age. Next day many hand-bills, some in prose and some in verse, were hawked through the streets of London, pretending to give an account of his death, and of his character.*

culty in pulling home his net containing it, and could not have supposed that he had caught more than a good-sized trout.

* From the kindness of my friend, Mr. J. Payne Collier, the originals of two of these now lie before me, and I copy them for the amusement of the reader:—

"A Full and true Account of the Death

of

GEORGE LORD JEFFRIES,

Late Lord Chancellor of England,

Who died in the Tower of London, April 18th, 1689.

Licensed, April 18th.—James Fraser.

"Many and great have been the expectations of the people about the event of the commitment of the late Lord Chancellor to the Tower; and their wishes have been as various as they have been affected to him. Many (who had entertained a just indignation against him for his late ill conduct of affairs) longed for his being brought to his trial, that he might receive that justice that his irregularities that he was committed for were thought to have deserved. But divine Providence has disappointed them herein by calling him to a higher bar, where he must give a just account of all his actions, and receive the just reward that is due to him for the same, unless he has prevented it by his repentance and God's infinite mercy.

"As to the manner of his death it was as followeth: He has been very much tor-

We have no accounts that can be implicitly relied upon, either of the manner in which he passed his time during his imprisonment, or of the immediate cause of his death. Some say that he died of a broken heart; others of repeated attacks of the stone, a disease under which he had long suffered; others, that he killed himself by brandy;* and others, that he was visited by madness, and died like a furious wild beast. The last may be rejected as a fable, invented to please the lovers of the marvellous; and we may safely believe that he sunk

mented with his old distemper, the stone and rheumatism, almost ever since he has been in the Tower, and there has not been any help wanting that skill or art could invent for the continuation of his life; but it has been all as ineffectual and vain as the supplications of the distressed were sometimes to him in the time of his power. For about this month last past he has been in a very languishing condition, still wasting away more and more, in which time he has hardly been in a capacity to take any thing to sustain nature, unless a little sack to revive it when it has been almost spent. About three weeks since he had a mind to a bit of salmon, which he had, but could not digest it, nor scarce any thing else, unless a poached egg. So he continued decaying till the 18th of this instant April, 1689, when, about half an hour after three in the morning, he died, in the forty-first year of his age; after having lived to see many ambitious designs disappointed, and their most gracious Majesties King William and Queen Mary seated on the throne; WHOM GOD LONG PRESERVE!"

"AN ELEGY

ON

SIR GEORGE JEFFREYS,

WHO DIED PRISONER IN THE TOWER OF LONDON, APRIL 18th, 1689.

"Poor widows' tears and begging orphans' cries
Sound forth his life, and sing his obsequies;
Then neither praise nor stigmatise his name,
His life's indented on the wings of fame:
That fame which will his cruel deeds recall,
And make them fresh to generations all.

"But since Death's issues do belong to God,
Who makes such Judges oft a nation's rod,
Judge not his soul, for God (and only he)
In Christ can set the greatest sinners free."

EPITAPH.

"Here England's great Lord Chancellor is laid,
Who King and kingdom, Church and State betray'd;
But may his crimes and bloodshed silent lie,
And ne'er against the English nation cry.

At the request of the Widows of the West, whose Husbands were hanged without trial by this Lord Chancellor."

* Oldmixon is the most positive as to this, representing the termination to his career as a Roman death. "He chose to save himself from a public death by large draughts of brandy, which soon despatched him."—Oldm. *Hist.* i. 762.

under the combined effects of bodily pain, mental anguish, and habitual intemperance. It is said that he profited by the spiritual ministrations of Dr. John Scott, a pious divine, but that he never could be induced to express any contrition for his cruelties in the West,—labouring, in his dying hours, under the delusion that he was excused in the sight of God and man by the consideration "that all the blood he had shed fell short of the King's demand."*

His remains were buried privately in the Tower, where they remained quietly for some years. A warrant was afterwards signed by Queen Mary, while William was on the Continent, directed to the Governor of the Tower, "for his delivering the body of George, late Lord Jeffreys, to his friends and relations, to bury him as they think fit." On the 2d of November, 1693, the body was disinterred, and buried a second time in a vault under the communion-table of St. Mary, Aldermanbury. In the year 1810, when the church was repaired, the coffin was inspected by the curious, and was found still fresh, with the name of "Lord Chancellor Jeffreys" inscribed upon it.

Little remains to be said of him as a statesman or as a criminal Judge. His acts, which I have detailed, show him in both capacities to deserve reprobation such as no language could adequately express. He cannot, like his predecessors Lord Clarendon and Lord Nottingham, be accused of bigotry, for all religious creeds as well as all political opinions seem to have been really indifferent to him, and in his choice of those which he professed he was guided only by his "desire to climb." Even the strong hatred against Dissenters which he affected when he had changed sides, he could (as in Rosewell's case), to please the government, entirely lay aside or suspend. From his daring and resolute character he probably felt a genuine contempt for "a Trimmer," and having no personal antipathy to an opponent who boldly went into extremes like himself, his bile was excited by watching a struggle between conscience and convenience. The revival of the Court of High Commission is the only great unconstitutional measure which he has the credit of having originated; but there were no measures, however illegal or pernicious, proposed by Charles or James, to the execution of which he did not devotedly and recklessly abandon himself. England, happy in the integrity and mildness of her Judges in the 18th century and in our own times,—during the Stuart reigns was cursed by a succession of ruffians in ermine, who, for the sake of court favour, violated the principles of law, the precepts of religion, and the dictates of humanity;—but they were all greatly outstripped

* For the last part of Jeffreys's career, see Memoirs of James, Echard, Rapin, Buckingham, Ralph, Oldmixon, Ellis's Corresp., North's Life of Guilford, Burnet, Dalrymple, M'Pherson. Throughout the whole of this memoir I have derived great assistance from the Life of Judge Jeffreys, by Humphry W. Woolwrich. "The Merciful Assize, or a Panegyric on the late Lord Jeffreys," though clever, is so much in the taste of satire, or rather lampoon, that I have placed no reliance upon it.

by Jeffreys, and though the infamous Scroggs with whom his name is generally coupled, was next to him, there was a long interval between them.*

As a civil Judge he was by no means without high qualifications, and in the absence of any motive to do wrong, he was willing to do right. He had a very quick perception, a vigorous and logical understanding, and an impressive eloquence. He must at the bar have severely felt his imperfect legal education and his want of experience in civil cases.† When appointed Chief Justice he was quite young enough by industry to have in a great measure supplied these defects; but, instead of sitting down to pore over the MS. treatises on Equity practice then in circulation, he spent his afternoons and evenings in intriguing against the Lord Keeper, or in carousing with his boon companions. When he had to decide questions respecting fines and recoveries, executory devises and contingent remainders, he could not resort, as on trials for treason, to the "fashionable doctrine of supporting the King's prerogative in its full extent, and without restriction or limitation, which rendered to such as espoused it all that branch of the law called constitutional, extremely easy and simple."‡ Though not learned in his profession, what was wanting in knowledge he made up by positiveness, and he was very imperious with his colleagues as well as with the bar.

We find a number of his common-law judgments in Shower, Skinner, and 3 Modern; but law reporters give an inadequate notion of the demeanour of a Chief Justice, as they do not tell us what was furnished to him by the puisnes, and they generally suppress what falls from him that is inconsiderate. One of the best specimens of Jeffreys's judicial powers is his argument in the case of the East India Company against Sandys,§ in which the question arose as to the validity of the charter giving to the plaintiffs the exclusive right of trading to all countries to the east of the Cape of Good Hope. Contrary to our notions on the subject he insisted very elaborately and ingeniously that such a charter might be granted by the Crown, so as to create a monopoly, without any confirmation by parliament, and that the defendant by trading within the prescribed limits was liable to the action. Thus he concluded:—"The King by his charter makes the plaintiffs as it were his ambassadors to concert peace with the Indians, and Mr. Sandys has complained that he is not one of them. Because the King may pardon every offender, but will not pardon any highwayman now in Newgate,

* The following is his character by Sir John M'Pherson, which, in quaint and affected terms, expresses much truth. "A man of outrageous abilities and violent principles; bold and intrepid from a fixed disregard of the world; profligate from a contempt of virtue; fair only to those whom he feared; a tyrant to the unfortunate, and a fawning slave to the great."—*M'Pherson*, i. 402.

† We may judge of his reputation as a lawyer by Maynard's reply to him, when he had, with his usual brutality, told the Serjeant opposed to him in a cause, that from his great age he had forgotten his law. "Yes, Sir George, I have forgotten more than you ever learned."

‡ Fox's History of James II., c. 2.

§ 10 St. Tr. 519.

must these jail-birds therefore think themselves injured in their liberty and property? The Company have been at the trouble of discovering places, of erecting forts, of keeping forces, of settling factories, and of making leagues and treaties; and it would be against natural equity to wrest the benefits from them which they have thus earned. Let there be judgment for the plaintiffs."*

When quite sober he was particularly good as a Nisi Prius Judge. His summing up, in what is called "The Lady Ivy's case,"† an ejectment between her and the Dean and Chapter of St. Paul's to recover a large estate at Shadwell, is most masterly. The evidence was exceedingly complicated, and he gives a beautiful sketch of the whole, both documentary and parol; and, without taking the case from the Jury, he makes some admirable observations on certain deeds produced by the Lady Ivy, which led to the conclusion that they were forged, and to a verdict for the Dean and Chapter.‡

Considering the systematic form which Equity jurisprudence had assumed under his two immediate predecessors, Jeffreys must have been very poorly furnished for presiding in Chancery. He had practised little before these Judges, and none of their decisions were yet in print; so that if he had been so inclined, he had not the opportunity to make himself familiar with the established practice and doctrines of the Court. Roger North says, "he came to the Seal without any concern at the weight of the duty incumbent upon him; for at the first, being merry over a bottle with some of his old friends, one of them told him, that he would find the business heavy. '*No,*' said he, '*I'll make it light.*'"§

Although he must often have betrayed his ignorance, yet with his characteristic boldness and energy he contrived to get through the business without any signal disgrace, and among all the invectives, satires, and lampoons by which his memory is blackened, I find little said against his decrees. He did not promulgate any body of new orders according to recent custom; but, while he held the Great Seal, he issued separate orders from time to time, some of which were very useful. He first put an end to a very oppressive practice, by which a plaintiff, having filed a frivolous and vexatious bill, might dismiss it on paying merely 20*s.* costs, and he directed that the defendant should be allowed all the costs he had incurred, to be properly ascertained by an officer of the Court.|| He then checked the abuse of staying actions at law for the examination of witnesses abroad, by requiring, before a

* It is curious to think that this is the Company which has become the sovereign of one hundred millions of subjects.

† 10 St. Tr. 555.

‡ Down to this time trials at Nisi Prius had not assumed their present shape. The issue being read to the Jury, the evidence was given, and without speeches by counsel, all seems to have been left to the Judge.

§ Life of Guilford, ii. 120.

|| 1 Vernon, 334. This matter is now regulated by 4 Anne, c. 15, s. 23. In the late case of Mendizabel *v.* Merchado, the Vice-chancellor cited and acted upon this order. 2 S. & S. 484.

commission to examine them issued, an affidavit specifying the names of the witnesses, and the facts they were expected to prove.* By subsequent orders which he framed, vexatious applications for rehearings were guarded against, and an attempt was made to get rid of what has ever been the opprobrium of the Court,—controversies about settling the minutes of a decree after it has been pronounced.†

Vernon, the Chancery Reporter, has selected and dressed up a considerable number of his decisions, so as to make them appear respectable, and to be occasionally cited as authorities at this day.‡ As might be expected, Lord Chancellor Jeffreys was little inclined to defer to fixed rules which stood in his way, saying that "he had as good a right to make precedents to succeeding times as those who had gone before him had made precedents for him;"§ and he showed a disposition to return to the old notion of the Chancellor's equitable jurisdiction by his observation, that "he was to make decrees according to his conscience, and every case was to stand upon its own bottom."‖

I will give one or two short specimens of his style as an Equity judge. In Hobley *v.* Weedon a bill was filed against the devisee of an heir of the obligor, who had died after a verdict against him on the bond, but before final judgment. LORD CHANCELLOR. "Dismiss the bill. There is no colour of Equity in the case, unless you will have it that the defendant died maliciously, before the day in bank, on purpose to defeat the plaintiff of his death."¶

In Gale *v.* Lindo, A. on a treaty of marriage of his sister with B., let her have a sum of money, that her fortune might appear equal to what B. demanded, and took a bond from her to repay him; the executor of A. put the bond in suit against the executor of the sister, who survived her husband, and there being no defence at law, the bill was filed for relief. LORD CHANCELLOR. "You admit the husband might have been relieved on a bill brought by him and his wife; that which was once a fraud will be always so; and the accident of the woman's surviving the husband will not better the case. Decree the bond to be delivered up, and a perpetual injunction against it."**

In the case of Sir Basil Firebras *v.* Brett, in which he granted an injunction against an action to recover money lost at play, he delivered a most edifying discourse against gaming; for, notwithstanding his own practices, he was always most furious in denouncing the vices of others.††

In cases of great magnitude, he had the good sense to call in the assistance of the common-law Judges, and by the advice of Lord Chief Justice Beddingfield, and Lord Chief Baron Atkins, he decreed that he

* Beames's Orders in Chancery, 265—288. † Ibid.

‡ From p. 334 of vol. i. to the end, and from the beginning to p. 90 of vol. ii. In Hardwicke's "Tribes of Wales" (110, n.) we are told that he was considered the author of Vernon's Reports; which could not well be, as they come down to the year 1718, when he had been thirty years in his grave.

§ Burnet, ii. 236.

‖ Earl of Rivers *v.* Earl of Derby, 2 Vern. 74. ¶ 1 Vern. 400.

** 1 Vern. 475. See Kemp *v.* Coleman, Salk, 156. †† Ibid. 489.

had jurisdiction to enforce a trust of lands in Ireland, the trustees residing in England;* and by the advice of Lord Chief Justice Jones, and Lord Chief Baron Montague, that a grant of lands by the Crown might be set aside in Equity on the ground of fraud.†

The oft-repeated compliment to bad Chancellors, that "none of his decrees were reversed," is bestowed upon Jeffreys. I find only one appeal brought against a decree of his, and this, notwithstanding suspicion and prejudice, terminated to his honour. When his son was about to be married to the heiress of the late Earl of Pembroke, a suit was instituted to determine whether a large sum of money belonged to her or to her father's creditors. The Chancellor decided in her favour, and the marriage was celebrated. Loud and deep reflections were made upon the Judge's honesty, and a ballad came out with these lines—

"Old Tyburn must groan
For Jeffreys is known
To have perjur'd his conscience to marry his son."

But he had the precaution to call in the assistance of the Master of the Rolls, Mr. Justice Lutwich, and Mr. Justice Powell, and though the appeal was heard after the Revolution, the decree was first affirmed by the Lords Commissioners of the Great Seal, and then by the House of Lords.‡

The most weighty testimony in his favour is the Speaker Onslow, who, from the tradition of Sir Joseph Jekyl, said, "he had great parts, and made a great Chancellor in the business of that Court. In mere private matters he was thought an able and upright judge." But this cannot outweigh the contemporary testimony against him—particularly that of an eyewitness, who, after candidly saying, "When he was in temper, and matters indifferent came before him, he became his seat of justice better than any other I ever saw in his place," adds, "he seemed to lay none of his business to heart, nor care what he did or left undone; and spent in the Chancery Court what time he thought fit to spare. Many times on days of causes at his house, the company have waited five hours in a morning, and after eleven he hath come out inflamed and staring as one distracted."§

He was excusably annoyed by the custom, which seems then to have prevailed, of having on the same side a great host of counsel, who necessarily repeated each other. "It was troublesome," he said, —"it was impertinent,—he could not bear it." His occasional rudeness to counsel appears incredible. Mr. Wallop, a gentleman of eminence at the bar, who defended the famous Richard Baxter, arguing against the opinion expressed by the Court upon the construction of a writing, Jeffreys said, "Mr. Wallop, I observe you are in all these dirty causes; and were it not for you gentlemen of the long robe, who

* The Earl of Kildare v. Eustace, 1 Vern. 419.
† Attorney-General v. Vernon, 1 Vern. 369.
‡ 2 Vern. 51, 213.
§ Life of Lord Guilford, ii. 118. 11 St. Tr. 499.

should have more wit and honesty than to support and hold up these factious knaves by the chin, we should not be at the pass we are at."—*Mr. Wallop.* "My Lord, I humbly conceive that——" *Jeffreys.* "You humbly conceive! and I humbly conceive! Swear him! Swear him!" Mr. Bradbury, a junior counsel, having ventured to make an observation which was received with courtesy, as it agreed with my Lord's view of the case, was by this encouraged to follow his leader in supporting a new objection thought by his Lordship not to be tenable. —*Jeffreys.* "Lord, Sir! you must be cackling too. We told you your objection was very ingenious; that must not make you troublesome; you cannot lay an egg but you must be cackling over it."*

Attorneys fared much worse. When they did any thing to displease him, he gave them what he called "a lick with the rough side of his tongue;" and he "terrified them with his face and voice, as if the thunder of the day of judgment broke over their heads." He had to decide upon a Petition against a great City attorney with whom he used to get drunk, and who had given him a great many briefs at Guildhall when still obscure; and one of the affidavits swore, that when the attorney was threatened with being brought before my Lord Chancellor, he exclaimed, "My Lord Chancellor! I *made* him!" meaning that he had laid the foundation of his fortune by bringing him early into City business.—*Jeffreys.* "Well! then will I lay my MAKER by the heels." He thereupon instantly ordered a commitment to be made out, and sent off his old friend to the Fleet.† But "he would drink and be merry, kiss and slaver with these boon companions over night, and the next day fall upon them ranting and scolding with insufferable virulence."‡ I rather find an inclination to praise him as a civil lawyer, which I can only explain from the desire to assume an air of impartiality, and to make a contrast between his actual bad qualities and the good ones invented for him; but I believe, take him for all in all, that in civil cases, as well as in criminal, he was in the words of Mr. Justice Foster, "the very worst Judge that ever disgraced Westminster Hall."

The manner in which Jeffreys, while Chancellor, attacked the independence of the Judges, was most outrageous. The trial of the Seven Bishops coming on, he removed from the office of Chief Justice of the King's Bench Sir Edward Herbert, who might have been expected to be tolerably subservient, to make room for his creature Sir Robert Wright, so notoriously incompetent for ignorance, stupidity, and immorality,

* 10 St. Tr. 626.

† Life of Guilford, ii. 118. "I was under the painful necessity of relating this anecdote in my argument in Stockdale *v.* Hansard to show that Judges might abuse their privileges as well as the House of Commons." *Lord Campbell's Speeches*, 138.

‡ Very different from Lord Mansfield's vengeance on Dr. Brocklesby, the famous physician, who, having met him in society overnight, and being examined before him in Court next morning, chose to be offensively familiar. *Lord Mansfield, summing up to the Jury*—"Gentlemen, the next witness is one Rocklesby or Brocklesby, Brocklesby or Rocklesby, and, first, he swears that he is a physician."

that the courtly Lord Keeper Guilford had long withstood the wish of Charles II. to make him a puisne Baron of the Exchequer.

When the question of the dispensing power arose upon issuing the last Declaration of Indulgence, Jeffreys showed a fixed purpose to obtain a unanimous opinion of the Judges in favour of it. He first summoned the reluctant ones to Chiffinch's lodgings at Whitehall, to talk over the subject with himself and the King, assisted by Sunderland, Rochester, and Godolphin. Baron Nevil tried to escape by saying that he would consider of it, but to a peremptory question declared against the prerogative. Jeffreys, by sending for him to his own house in Duke Street, still tried to bend him,—and finding him inflexible forwarded to him his quietus. Sir Thomas Street, a Judge of the Common Pleas, and that most able and upright man, Sir John Powell, a Judge of the King's Bench, being laboured in the same manner to as little purpose, shared the same fate,—Powell, on account of his high character, having a respite till the end of the term from Jeffreys, who went so far as to say "he was sorry so good a Judge should be turned out for so trifling a cause."* He was quite indifferent as to the qualifications of their successors if they were obedient to his will, and it became necessary for William to make a sweeping change on the Bench as one of the first acts of the new government.†

I have discovered one benevolent opinion of this cruel Chancellor, and, strange to say, it is at variance with that of the humane magistrates who have adorned Westminster Hall in the nineteenth century. "The Prisoners' Counsel Bill" was condemned and opposed by almost all the Judges in the reign of William IV., yet even Jeffreys was struck with the injustice and inequality of the law, which, allowing the accused to defend himself by counsel "for a twopenny trespass," refuses that aid "where life, estate, honour, and all are concerned," and lamented its existence while he declared himself bound to adhere to it.‡ The venerable sages who apprehended such multiplied evils from altering the practice must have been greatly relieved by finding that their objections have proved as unfounded as those which were urged against the abolition of "*peine forte et dure;*" and the alarming innovation, so long resisted, of allowing witnesses for the prisoner to be examined under the sanction of an oath.

Jeffreys only sat in parliament for a few weeks, and all we know of his performances there, is that he bullied his predecessor, Lord Keeper Guilford, and that he himself broke down when, by his indiscriminating arrogance, he had set all the Peers of England against him. He was nearly the only Chancellor of the seventeenth century who was not an

* These facts came out from an examination of the Judges before a committee of the House of Commons after the Revolution.

† It was then that Holt was made Chief Justice of the King's Bench, and Atkyns, Dolben, Gregory, and John Powell, who had been removed during the two preceding reigns for their honesty, being restored to the bench, the Courts were presided over by the best set of Judges that Westminster Hall has ever seen.

‡ 10 St. Tr. 267.

author; but we cannot trace to him the publication even of a speech, a pamphlet, or a law tract.

We have no very distinct account of him in domestic life. Having lost his first wife, whom he had espoused so generously, within three months from her death he again entered the married state. The object of his choice was the widow of a Montgomeryshire gentleman, and daughter of Sir Thomas Bludworth, who had been Lord Mayor of London, and for many years one of the City representatives. I am sorry to say there was much scandal about the second Lady Jeffreys, and she presented him prematurely with a full-grown child. It is related that he was once disagreeably reminded of this mistake: when cross-examining a flippant female, he said to her, "Madam, you are very quick in your answers." "Quick as I am, Sir George," cried she, "I was not so quick as your lady."* Even after the marriage she is still said to have encouraged Sir John Trevor, M. R., and other lovers, while her husband was indulging in his cups.

"He had a set of banterers for the most part near him, as in old time great men kept fools to make them merry. And these fellows, abusing one another and their betters, were a regale to him."† But there can be no doubt that he circulated in good society. He was not only much at Court, but he exchanged visits with the nobility and persons of distinction in different walks of life. In the social circle, being entirely free from hypocrisy and affectation,—from haughtiness and ill-nature,—laughing at principle,—courting a reputation for profligacy,—talking with the utmost freedom of all parties and all men,—he disarmed the censure of the world,—and, by the fascination of his manners, while he was present, he threw an oblivion over his vices and his crimes.

The second Earl of Clarendon, shortly before the landing of the Prince of Orange, having visited him at Bulstrode, his country seat, on some business, which could not be entered upon by the default of absentees, gives us in his diary the following account of the manner in which the Chancellor amused him till the hour for the banquet. "I went in his calash with him. He talked very freely to me of all affairs; called the Judges a thousand fools and knaves; that Chief Justice Wright was a beast.* He said the King and Queen were

* The following is an extract from a long poem published on this occasion, in February, 1679:—

"When old St. George did dragon slay,
He sav'd a maid from cruel fray;
But this Sir George, whom knaves do brag on,
Mist of the maid, and caught the dragon.
Marriage and hanging both do go
By destiny. Sir George, if so,
You stand as fairly both to have
As ever yet did fool or knave.
What then, you fool? Some wives miscarry,
And reckon June for January."

† Life of Guilford, ii. 117.

‡ This is the man he had just made Chief Justice of the King's Bench to try the Seven Bishops.

to dine with him on Thursday next; that he had still great hopes the King would be moderate when parliament met.* When we came to Dr. Hickman's my Lord was inclined to be merry; saying he had papists and spies among his own servants, and therefore must be cautious at home."

From Sir John Reresby we learn how very pleasant (if not quite decorous) must have been his parties in Duke Street. "I dined with the Lord Chancellor, where the Lord Mayor of London was a guest, and some other gentlemen. His Lordship having, according to custom, drank deep at dinner, called for one Mountfort, a gentleman of his, who had been a comedian, an excellent mimic; and to divert the company, as he was pleased to term it, he made him plead before him in a feigned cause, during which he aped the Judges and all the great lawyers of the age in their tone of voice and in their action and gesture of body, to the very great ridicule, not only of the lawyers, but of the law itself, which to me did not seem altogether so prudent in a man in his lofty station in the law; diverting it certainly was, but prudent in the Lord Chancellor I shall never think it."†

On one occasion dining in the City with Alderman Duncomb, the Lord Treasurer and other great Courtiers being of the party,—they worked themselves up to such a pitch of loyalty by bumpers to "Confusion to the Whigs," that they all stripped to their shirts and were about to get upon a signpost to drink the King's health,—when they were accidentally diverted from their purpose,—and the Lord Chancellor escaped the fate which befell Sir Charles Sedley, of being indicted for indecently exposing his person in the public streets. But this frolic brought upon him a violent fit of the stone which nearly cost him his life.‡

I should have expected that, boldly descending to the level of his company and conscious of great mental power, he would have despised flattery; but it is said that none could be too fulsome for him, and this statement is corroborated by some Dedications to him still extant. The pious author of the "History of Oracles and the Cheats of the Pagan Priests,"§ after lauding his great virtues and actions, thus proceeds:—"Nor can the unthinking and most malicious of your enemies reproach your Lordship with self-interest in any of your services, since all the world knows that when they were thought criminal, nay even punishable,—you had nothing left you but HONOUR, JUSTICE, and INNOCENCE."

He was not only famous, like the Baron of Bradwardine, for his *chansons à boire*, but he had a scientific skill in music, of which we

* The parliament about to be called when the Prince of Orange was approaching.

† Sir John Reresby, 229.

‡ Sir John Reresby, 231. The warmest defence I find of his sobriety is by Bevil Higgins, in his review of Burnet's History, who says, "If my Lord Jeffries exceeded the bounds of temperance now and then in an evening, it does not follow that he was drunk on the bench and in council."—Vol. ii. 263.

§ Published in 1668.

have proof at this day. There being a great controversy which of the two rival organ-builders, Smith or Harris, should be the artist to supply a new organ to the Temple Church, it was agreed that each should send one on trial, and that the Lord Chancellor should decide between them. He decreed for Smith,—the deep and rich tones of whose organ still charm us. Harris's went to Wolverhampton, and is said to be of hardly inferior merit.*

There is an anecdote related of him respecting his interference in a contested election, which, however extraordinary, is rather characteristic in some of its circumstances, and I am not at liberty to reject it. The scene is laid at Arundel, where, upon a vacancy in the representation, there was a keen struggle, to which the government attached great importance,—and Jeffreys, who had recently got the Great Seal, was asked to go down to countenance the Tory candidate. He not only did so, but entered the Town Hall while the poll was going forward, and the Mayor, who was the returning officer, having rejected a Tory voter, he rose in a great passion, and contending imperiously that the vote was clearly good, insisted upon its being admitted. The Mayor tried to silence him.—*Jeffreys*. "I am the Lord Chancellor of this realm."—*Mayor*. "Impossible! were you the Lord Chancellor you would know that you have nothing to do here where I alone preside. Officers, turn that fellow out of Court." Jeffreys, for once abashed, withdrew to his inn; and, wishing to hush the matter up, in the evening asked the Mayor to sup with him. The virtuous magistrate declining this suspicious honour, the Chancellor boldly went to his house, and, introducing himself, said, "Sir, notwithstanding we are in different interests, I cannot help revering one who so well knows and dares so nobly execute the law; and though I myself was somewhat degraded thereby, you did but your duty. You, as I have learned, are independent, but you may have some relation who is not so well provided for; if you have, let me enjoy the pleasure of presenting him with a considerable place in my gift now vacant." This was irresistible: his worship said he had a nephew to whom the place, which his Lordship so generously offered, would be very suitable, and the appointment was immediately made out and signed.†

He had never forgiven his father for so obstinately wishing to make him a tradesman, and uttering such sinister prophecies as to the termination of his career, and he had not visited or corresponded with him since the riotous assault upon Acton when he was Chief Justice of Chester.‡ Become a Peer, and Lord High Chancellor, he intimated, in the long vacation of 1686, an intention of coming to ask his father's blessing; but the old gentleman, hurt by past neglect, shocked by the stories of his son which reached his ears, and thinking that George was now actuated merely by a desire to show his greatness in his native place, harshly refused to receive him, and sent him a blessing, with a prayer for his reformation.

* Granger's Biog. Hist. by Noble, ii. 363. † Wool. 310. ‡ Ante, p. 404.

It is said that, shortly before the coming of the Prince of Orange, he was in such high favour that he was about to be raised to an Earldom. Some assert that the patent was prepared and was ready to pass the Great Seal; and there certainly was extant, in the middle of the last century, a book entitled "Dissertatio Lithologica, auctore Joanne Grœnevelt, Transisalano, Daventriensi M. D. E. Col. Med. Lond." dedicated "Honoratissimo Domino, D. Georgio Comiti Flintensi, Vicecomiti de Wickham, Baroni de Wem, supremo Angliæ Cancellario, et serenissimo Jacobo Secundo, Regi Angliæ a secretioribus Consiliis." If the Dutch fleet had met with a storm, he might have lived and died Earl of Flint, and then who can tell whether he would not have appeared in different colours to posterity?

He had children by both his wives; but of these only one son grew up to manhood, and survived him. This was John, the second Lord Jeffreys, who has acquired celebrity only by having rivalled his father in the power of drinking, and for having, when in a state of intoxication, interrupted the funeral of Dryden the poet. He was married, as we have seen, to the daughter of the Earl of Pembroke, but dying in 1703, without male issue, the title of Jeffreys happily became extinct. He soon dissipated large estates, which his father, by such unjustifiable means, had acquired in Shropshire, Buckinghamshire, and Leicestershire.*

On the meeting of the Convention Parliament attempts were made to attaint the late Chancellor Jeffreys,—to prevent his heirs from sitting in parliament,—and to charge his estates with compensation to those whom he had injured;—but they all failed, and no mark of public censure was set upon his memory beyond excepting him, with some other Judges, from the act of indemnity passed at the commencement of the new reign.

In his person he was rather above the middle stature, his complexion (before it was bloated by intemperance) inclining to fair, and he was of a comely appearance. There was great animation in his eye, with a twinkle which might breed a suspicion of insincerity and lurking malice. His brow was commanding, and he managed it with wonderful effect whether he wished to terrify or to conciliate. There are many portraits of him, all, from his marked features, bearing a great resemblance to each other, and, it may be presumed, to the original. The best was by Sir Godfrey Kneller, painted in 1687, and hung up in the

* Nichols's Leicestershire, i. 114. In Yorke's "Life and Character of the late Lord Chancellor Jeffreys," he observes:—"He left only one son, and with him ended the name, the honour, and the estate; and this in so short a time, that some of those very servants who had lived with the Chancellor when he was hardly worth a shilling, and lived to see him acquire an estate of twelve thousand a year, continued still in the family, till the whole was spent and squandered."

—— "Qui nimios obtabat honores,
Et nimias poscebat opes, numerosa parabat
Excelsæ turris tabulata, unde altior esset
Casus, et impulsæ præceps immane ruinæ."

Inner Temple Hall. Although that society had been eager to show their respect for him when he was made Chancellor, and voted 50*l.* for a full length of him in his robes, that during dinner the students might be stimulated to imitate his conduct in the hope of reaching his elevation,—when misfortune overtook him, the Benchers, expecting a visit from King William and Queen Mary, ordered it to be taken down and hid in a garret. There it remained till the year 1695, when, at "a parliament," the following resolution was passed:—"That Mr. Treasurer do declare to the Lord Jeffreys that, at his Lordship's desire, the House do make a present to his Lordship of his father's picture, now in Mr. Holloway's chambers, who is desired to deliver the same to his Lordship or his order."

The son accepted the ungracious present, and sent it to Acton; but it was swept away, with other family portraits, to pay his debts.

An engraving of the father was published soon after his capture at Wapping, which had a prodigious sale, as it represented "the Lord Chancellor taken in disguise and surrounded by the mob."*

A very few sentences will be sufficient to notice the changes in the law, and the manner in which it was administered in the reign of James II. His single parliament sat only for a few weeks, and the only legislative improvement upon our jurisprudence attempted was the enactment, that in case of a son dying intestate and without children after the death of his father, the personal property, instead of all going to the mother, shall be divided in equal portions between her and the brothers and sisters of the intestate.† Of judge-made law (which always bears a large proportion to parliamentary‡) there was great abundance, but it was of the worst quality, and, happily, a great part of it was speedily overturned. Jeffreys presiding in the Court of Chancery, and Wright in the King's Bench, their brethren were of the same stamp,—men of learning and independence, being chased from the Bench;—and not only was the King's power to dispense with laws carried to an extent which, if acquiesced in, would have established a pure despotism, but

* I have in my possession a copy of a similar print that was published in Holland, where the fate of Jeffreys seems to have excited almost as much interest as in his own country. It is entitled "De Lord Cantzelier werd gedeguiseert, in Wapping gevangen." Jeffreys is dressed like a Dutch sailor, with several pair of breeches on, surrounded and hustled by officers of justice and the populace. Out of their mouths severally are coming the following words:—"Wel broer Peters wat segje nu;" "By jaen neen fult hangen;" "Denkt opt Westen;" "Heugdn d'Heer Cornish;" "Denkt opt de Bischoppe;" "Slaahem de kop in;" "Denktan St. Magdalena Coll." Being thus reproached with his misdeeds, the words come from his own mouth, "Scheurd my aan stukken."

I have made a collection of the portraits of the Lord Chancellors since Cardinal Bourchier, with which, together with the Great Seals of the different Sovereigns since Edward the Confessor, I once thought of illustrating this work.

† 1 Jac. 2, c. 17, s. 7.

‡ Pemberton, C. J., used to boast that, "in making law he had outdone King, Lords, and Commons."

private rights and private property were becoming insecúre, and all those objects were endangered for the preservation of which civil government is established. However, James would subvert the religion as well as the liberties of his subjects, and he was hurled from the throne.

It is consoling to me to think that, after the irksome task of relating the actions of so many men devoid of political principle, and ready to suggest or to support any measures, however arbitrary or mischievous, for the purpose of procuring their own advancement,—a brighter prospect now opens, and I see rising before me Chancellors distinguished for their virtues as well as for their talents. To preserve the essential distinctions between right and wrong, to consult the best interests of mankind, I am obliged to expose to reprobation such characters as Shaftesbury, Guilford, and Jeffreys; but it will be far more congenial to my feelings to present for applause and imitation a Somers, a Cowper, a King, and a Hardwicke.

END OF THE THIRD VOLUME.

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